

THE UNIVERSITY OF HULL

Do Committees Make a Difference? An Examination of the Viscosity of
Legislative Committees in the British House of Commons

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Abstract

Do Committees Make a Difference?

Public bill committees in the British House of Commons play a crucial role in the scrutiny of government legislation. The reform of the bill committee system in 2006 and the introduction of oral evidence taking as a standard procedure significantly raised the profile of this stage of the legislative process and had the potential to increase the power of bill committees to constrain the government in the passage of legislation.

Yet there remains no detailed analysis of the work of these modern bill committees and of their impact on government bills. This thesis seeks to address this gap, with the most comprehensive quantitative analysis of bill committee work since that of John Griffith in 1974. It analyses 139 bill committees and report stage debates over a ten year period in great detail and supplements this with a series of interviews with Members of Parliament and parliamentary officials.

The thesis finds that the context in which bill committees are working is very different from that identified by Griffith. Whilst the majority of bills leave committee with amendments, a culture of resistance among government ministers means that 99 per cent of all successful amendments are government amendments. The real impact of committee stage is then identified as taking place at the report stage of bills. It is here that committees can – and do – make a difference to government legislation, with an average of ten changes being made at the report stage of every bill on the basis of undertakings ministers have made in committee. Ultimately the thesis finds when the MPs appointed to committees have specialist knowledge of the subject and when good use is made of oral evidence sessions, the capacity of committees to make a difference to government legislation increases considerably.

1.Introduction

Do Committees Make a Difference?

The analysis of legislative impact on public policy remains at the forefront of legislative research. Given that scrutiny is one of the core functions of any legislative body it is only natural to seek evidence that parliamentary scrutiny can have an observable and meaningful impact on legislation. Public bill committees play a crucial role in this context, providing parliamentarians with the ability to scrutinise a bill 'line by line'; to question the government and to debate some of the more controversial elements of legislation. This thesis offers the most comprehensive¹ analysis of bill committee work in over thirty years, examining the difference committees are making to government legislation and analysing two of the key variables affecting their work; the specialisation of their Members and the taking of oral evidence.

Legislative committees offering detailed scrutiny of public bills have long been 'essential to the dispatch of parliamentary business'² in the House of Commons. Indeed, temporary standing committees were first introduced to the House in 1882, undergoing a series of incremental changes before becoming more comprehensive and standardised from the mid-twentieth century. Since 1907 the Standing Orders of the House have required all bills to go to standing committee for scrutiny following their second reading unless the House decides otherwise³. In practice only bills of significant constitutional importance or non contentious measures take their committee stage on the floor of the legislative chamber, in a Committee of the Whole House.

Following an overhaul of the system in 2006, standing committees in the House of Commons became known as public bill committees. Under Standing Order 83A these committees have the power to send for 'persons, papers and records'⁴ and thus the capacity to take oral and written evidence⁵. All programmed bills are eligible to use these new procedures before the traditional line by line scrutiny commences. Typically, committees hold three or four evidence sessions. Those giving oral evidence are generally

¹ The number of bills, committees and sessions examined is far greater than in any published work since that of John Griffith in his work *Parliamentary Scrutiny of Government Bills*, London; Allen & Unwin, 1974.

² S A Walkland, 'Committees in the House of Commons', in J Lees and M Shaw, (eds.), *Committees in Legislatures*, Oxford: Robertson, 1979, p. 246.

³ S A Walkland, 'Government Legislation in the House of Commons', in S A Walkland (ed.), *The House of Commons in the Twentieth Century*, Oxford: Clarendon Press, 1979, p.258.

⁴ HC Standing Order 83A.

⁵ Bills not subject to programming can also be considered for this procedure under Standing Order No.63.

representatives from outside organisations, though one session is usually reserved for the government minister(s) and relevant departmental officials.

Despite their centrality to the passage of legislation, bill committees have long had an unenviable reputation. They are curious creatures; essential to the scrutiny and passage of government legislation yet largely considered ineffective and futile⁶. Outside organisations fiercely target them, yet Members of Parliament reportedly go out of their way to avoid serving on them⁷. Their proceedings are often long and arduous, averaging well over 300 hours per parliamentary session. They thus account for a greater proportion of parliamentary time than any other stage of the legislative process⁸. Yet their proceedings are rarely reported in the mainstream media⁹; one must consult academic work or – occasionally – MPs' personal blogs and autobiographies¹⁰ in order to find any real discussion of recent committee work.

Frequently derided by academics and parliamentarians alike for their apparent lack of influence, they have been described as 'mere accessories'¹¹ of the legislative process and more recently, an example of 'parliament at its worst'¹². They are widely considered to have 'little real chance of influencing legislation'¹³. Yet these strong opinions of the work of bill committees are supported by very little substantive evidence. Indeed, the only truly comprehensive study of their work is now nearly forty years old¹⁴. There remains a distinct gap in the literature of studies of the impact of bill committees on legislation. This research seeks to consider the work of contemporary bill committees in the House of Commons in terms of their capacity to make a difference to the passage of legislation. In

⁶ Andrew Tyrie MP recalls MPs describing them as 'desperate', 'dire' and 'a pointless ritual'. See A Tyrie, *Mr Blair's Poodle: An agenda for reviving the House of Commons*, London: Centre for Policy Studies, 2000, p. 11.

⁷ Norton for example describes them as being a 'chore' (P Norton 'The Legislative Powers of Parliament', in Flinterman, A. Heringa, A W and Waddington, L (eds.), *The Evolving Role of Parliaments in Europe*, Antwerp: Maklu, 1994, p. 25) whilst Sir George Young described committee meetings in his blog as being like 'doing time' (G Young, 'Doing Time', 24 January 2008, accessed online at <http://www.sirgeorgeyoung.org.uk/articles/newsitem.cfm?newsid=3205> (accessed 3 October 2012)).

⁸ Based on committee sittings on government bills between 2000-2010.

⁹ A rare example of this is the reports of the NHS Reform Bill being sent back to committee for further scrutiny. See for example N Watt, 'NHS reform bill sent back to MPs for examination' *The Guardian*, 26 May 2011. Evidence taking sessions have also occasionally been reported in the media. See for example the discussion of Sir Ian Blair's evidence to a bill committee in the Counter Terrorism Bill (2007-08 session), P Mercer, *7th Sitting, Counter Terrorism Bill Committee*, 6 May 2008, col. 243.

¹⁰ See for example C Mullin, *A View from the Foothills: The Diaries of Chris Mullin*, London: Profile, 2009 and G Young, 'Doing Time', 24 January 2008, accessed online at <http://www.sirgeorgeyoung.org.uk/articles/newsitem.cfm?newsid=3205> (accessed 3 October 2012)

¹¹ E Taylor, *The House of Commons at Work*, Middlesex: Penguin, 1951, p. 164.

¹² B George, *1st Sitting, Private Security Industry (HL) Bill Committee*, 10 April 2001.

¹³ B Crick, *The Reform of Parliament*, London: Weidenfield and Nicolson, 1970, p. 88.

¹⁴ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974.

essence, it will consider whether these common descriptors are a true and valid assessment of bill committee performance.

The Functions of Bill Committees

Bill committees contain between 16 and 50 Members of Parliament and traditionally sit on Tuesdays and Thursdays when the House is in session¹⁵. Members are appointed by the Committee of Selection following the second reading debate of a bill, in conjunction with the party whips and in accordance with each party's size in the House of Commons. A programme motion will usually be agreed at the start of the very first sitting of a committee. Here, the number of sessions, evidence sessions and witnesses will be discussed and agreed to¹⁶.

The functions of bill committees fall into two distinct categories; a legislative scrutiny function and an additional function as an arena for parliamentary debate. Erskine May for instance notes that the primary role of bill committees is to render a piece of legislation 'more generally acceptable'¹⁷. In performing this function, committee members undertake a legislative and a scrutiny role, often at the same time. Bill committees provide backbench MPs and the opposition frontbench with the first opportunity in which to make amendments to government and private members' legislation. Any Member of Parliament may table an amendment to a bill should they wish to do so, though only members of the bill committee itself may move an amendment. Amendments to legislation are more commonly a short addition to, or removal of, the existing text of a bill, but can also take the form of an entire new clause or schedule. They can be tabled following the second reading of the Bill, with at least three sitting days' notice required¹⁸. Whilst the changes made to legislation are usually of a minor nature, major changes can be introduced at this stage. The most frequently cited and controversial change emanating from a bill committee is undoubtedly that of Section 28 of the 1989 Local Government Act regarding the provision of council services. During the committee stage of the Bill Government Minister Michael Howard accepted an amendment moved by David Wilshire regarding the 'promotion' of

¹⁵ Tuesday morning sittings must finish by 1pm whilst Thursday morning sittings must finish by 10.25am. Afternoon sittings are much more variable, proceeding until the committee decides to conclude the sitting.

¹⁶ Sometimes- though not always - this is achieved through a formal division of the committee.

¹⁷ Sir W McKay *et al.* (eds.), *Erskine May Parliamentary Practice: The Law, Privileges, Proceedings and Usage of Parliament*, 23rd Edn., London: Lexis Nexis, 2004.

¹⁸ That is, three sitting days prior to the sitting in which the amendment will be considered. Thus an amendment for consideration in committee on a Tuesday must be tabled by the time the House rises on the preceding Thursday. Very occasionally, a 'manuscript' amendment (one which has not been tabled in time) will be accepted by the Chairman.

homosexuality¹⁹. As Garret and Lynch note, the passage of this new clause in committee became 'one of the most unpopular measures taken by the Conservative governments of 1979-97'²⁰. Attempts to repeal this unpopular clause were also made during later bill committees²¹.

Discussion in committee proceeds on a 'line by line' basis with each clause or schedule of a bill considered in turn. Amendments are grouped for discussion²², but will only be voted upon in the order in which they appear in the text of the bill. When all amendments relating to a clause or schedule have been discussed or if no amendments have been tabled in relation to a clause or schedule there is the opportunity for a 'stand part' debate. This is a general debate in which the clause or schedule as a whole may be discussed and voted upon by the committee²³. Debate proceeds on the basis that 'the clause stand part of the Bill'²⁴.

Amendments tabled by MPs are not always motivated by the desire to see a change to the text of a bill; they also serve an additional scrutiny function. MPs view part of their role in committee as that of identifying the 'unintended consequences'²⁵ of legislation. Thus, they frequently seek to explore the meaning of specific words or phrases used in the text of a bill or the precise purpose of a particular section or clause.

However, during the line by line scrutiny of a clause, debate can only proceed through a formal amendment. Committee members concerned about the interpretation of a word or phrase within the bill thus typically table an amendment to remove or amend the phrase in question. For example, during the debate on the Children, Schools and Families Bill (2009-10 session) Shadow Minister Tim Loughton wanted to inquire about the definition of a 'modern foreign language' within school curriculums. In order to probe this phrase with the government minister he tabled an amendment to remove the word 'modern'²⁶.

¹⁹ See D Wilshire, *HC Debates*, 10 March 2003, Col. 73.

²⁰ M Garnett and P Lynch, *Exploring British Politics*, 2nd Edn, London: Pearson Longman, 2009, p. 190.

²¹ For example, the clause was successfully repealed during the committee scrutiny of the Local Government Bill (2003) though this was later overturned in the House of Lords. Division 25, 13th Sitting, *Local Government Bill Committee*, 13 February 2003, col 567.

²² This ensures that consequential amendments tabled by a Member and those tabled by other Members but which have the same aim or focus are discussed together.

²³ Clauses and schedules – like amendments – do not have to be formally divided upon, though a committee can choose to do so if it wishes.

²⁴ This is assuming that the committee does not run out of time. When the time allocated for committee discussion comes to an end, the remaining clauses within the bill which the committee has not reached will not be discussed.

²⁵ Government Backbench MP, 23 March 2010, Interview with author.

²⁶ See T Loughton, 10th Sitting, *Children, Schools and Families Bill Committee*, 2 February 2010, col 400.

The debate on the amendment was then used to scrutinise the government minister on the Government's intention. Such amendments are often referred to as 'probing'.

Committee stage is not only a place for the introduction of non government amendments. It is also a vehicle in which governments are able to make changes to the text of their own bills. This may take the form of minor drafting changes, but can equally include the introduction of more substantive changes to legislation. There is no limit on the number of amendments which may be tabled by committee members or by the Government for consideration in committee.

An equally important - function of bill committees in what is generally considered to be the archetypal arena legislature is quite simply as an arena for the debate of policy issues. Walkland for example notes that it is unclear whether the chief function of bill committees is 'one of shaping the details,' of legislation or whether it is to 'extend political advocacy and opposition beyond the second reading stage into the details of legislation'²⁷. Committee sessions afford backbench and frontbench MPs alike with a valuable opportunity to debate with government ministers and with members of opposing parties in a much more intimate environment than would be possible on the floor of the House. In an arena in which MPs are not vying for press coverage of their comments, debate can be more constructive, with the potential at least for less partisan oral exchange. For example, four whole sittings were devoted to the discussion of the controversial issue of university top up fees in the Higher Education Bill during the 2003-04 parliamentary session, providing committee members with considerable time in which to debate the subject and allowing each individual member greater opportunity to develop their argument and to debate with the government minister than would have been possible in the chamber itself.

This is not to say that partisan debate is not a function of bill committees. Indeed, one of the chief functions of the opposition in committees is to 'make the Government less generally acceptable'²⁸. In the confines of the committee room, opposition MPs are able to question the relevant government minister in more detail, with the opportunity for greater follow up questions on issues which may be of technical or political importance. Borthwick notes for example that 'it is usually the Opposition who have most to say in

²⁷ S A Walkland, *The Legislative Process in Great Britain*, London: George Allen and Unwin Ltd, 1968, p.73.

²⁸ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p.38.

committee'²⁹. They are thus equally valuable as arenas for the robust exchange of views as they are for the scrutiny and amendment of legislation.

Bill committees serve an additional function, acting as a parliamentary training ground, one which is particularly significant for government ministers and for newly elected MPs. Griffith noted in 1974 that 'reputations are frequently made and lost in committee'³⁰ and this still holds true today. Given that it is usually junior departmental ministers leading for the Government in committee there is much to be gained from effective performances in committee and much to be lost should a committee not go as planned. The pressure on a government minister can therefore be immense:

"For hour after hour and for week after week a Minister may be required to defend his bill against attack from others who may be only slightly less knowledgeable than himself. His departmental brief may be full and his grasp of the subject considerable but even so he needs to be constantly on the alert and any defects he or his policy reveals will be very quickly exploited by his political opponents."³¹

For newly elected MPs bill committees constitute an important element of parliamentary socialisation. Committee procedure is very similar to that used on the floor of the House itself and thus, as Rush and Giddings note, they are 'an important means of learning the ropes'³². They find that the majority of MPs are appointed to serve on bill committees in the first year of their election to Parliament³³.

Whilst the function of bill committees as arenas for debate and for parliamentary training or socialisation is of great importance, it is the first function – that of legislative scrutiny – which forms the focus of this research.

Research Aims

The aims of the research are fourfold:

- i) To compile a set of contemporary data regarding the work of House of Commons bill committees .

²⁹ R L Borthwick, *The Standing Committees of the House of Commons: A Study of Membership, Procedure and Working between 1945 and 1959*, *Unpublished PhD Thesis, University of Nottingham*, 1967, p. 251.

³⁰ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 233.

³¹ J A G Griffith 'Standing Committees in the House of Commons', in S A Walkland and M Ryle (eds), *The Commons Today*, Rev. Edn, Glasgow: Fontana, 1981, p. 131-2.

³² M Rush and P Giddings, *Parliamentary Socialisation: Learning the Ropes or Determining Behaviour?*, Hampshire: Palgrave Macmillan, 2011, p. 95.

³³ *Ibid.*, p. 96.

- ii) To consider the impact of House of Commons bill committees on government legislation.
- iii) To examine the effect of the specialisation of committee members on the scrutiny of government legislation.
- iv) To examine the impact of the new oral evidence taking procedures on the scrutiny of government bills in committee.

These aims form the basis of the study and underpin both the analytical framework and the methodological approach.

Analytical Framework

i) Measuring Legislative Impact

Gauging the relative impact that a legislature is able to make upon measures of executive policy has long been a core element of legislative studies³⁴. Given that the 'decisional'³⁵ function is one of the core functions of all legislatures, this focus on parliamentary output is inevitable. It is typically referred to as a 'constraint'³⁶. Mezey offers the finest summary of the constraining power deployed by a legislature as something which 'restricts the action of the executive branch and prevents it from making policy unilaterally'³⁷. Thus a legislature which is able to make its presence felt and bring about significant change to government policy is demonstrating a high level of constraint. Such a legislature is able to 'set definite parameters on the scope of executive policy making'³⁸. Mezey links this to the overall strength of a legislature. Thus one which exerts very weak constraints over measures of public policy is considered to be a 'correspondingly weak element [of] the policy making process'³⁹.

³⁴ For example, Eric Kerrouche's contribution to a Special Issue of the *Journal of Legislative Studies* on the legislative performance of the Assemblée Nationale concentrated primarily on the number of bills and amendments introduced and passed by the legislature. See E Kerrouche, 'The French Assemblée Nationale: The Case of a Weak Legislature?', *The Journal of Legislative Studies*, 12, 3/4, 2006, pp. 336 - 365.

³⁵ R A Packenham, 'Legislatures and Political Development', in A Kornberg and L D Musolf (eds.), *Legislatures in Developmental Perspective*, Durham: Duke University Press, 1970, pp. 531.

³⁶ See for example M L Mezey, *Comparative Legislatures*, Durham, Duke University Press, 1979, p. 25.

³⁷ *ibid.*, p.25.

³⁸ *ibid.*, p. 47.

³⁹ *ibid.*, p.25.

Typically, two primary constraints are available to legislatures when scrutinising measures of public policy; the veto or the ability to end a bill's progress completely and the amendment or modification of the main principles of a bill or of its more technical components. Mezey describes the latter as a 'weaker constraint'⁴⁰, but it is a constraint nevertheless. A typical examination of legislative impact would therefore consider the frequency with which a legislature vetoes executive bills and the frequency of successful legislative amendments.

ii) *Legislative Impact of the House of Commons*

This method of measuring legislative impact is frequently used with reference to the British House of Commons. It is important to note that the British Parliament falls within Mezey's category of a 'reactive'⁴¹ legislature. Therefore the legislative impact of the House of Commons will inevitably be of a different nature to that of an 'active' legislature such as the US Congress. As both Mezey and Norton point out, reactive legislatures 'usually cannot prevent executive elites from doing what they want to do'⁴². Indeed, as Norton suggests, when scrutinising a measure of public policy, a reactive or policy-influencing legislature such as the House of Commons 'can reject the jigsaw or, more likely reject or move about some of the pieces, but has not the capacity to reconstruct it or create a new jigsaw'⁴³.

Whilst the capacity of the House of Commons to veto measures of government policy is not in doubt, its significance lies in the frequency of its use; the defeat of government bills on the floor of the House is very rare indeed. Studies of the legislative impact of the House of Commons are therefore more frequently concerned with the supposedly 'weaker' form of constraint; the ability of the House to exact amendments to sections of government bills⁴⁴. As Mezey notes, even where government proposals are virtually always successful 'legislatures may [still] be constraining the executive'; it is simply an area which is 'difficult to nail down empirically'⁴⁵.

⁴⁰ M L Mezey, *Comparative Legislatures*, Durham, Duke University Press, 1979, p. 25.

⁴¹ Ibid.

⁴² Ibid., p. 47.

⁴³ P Norton, 'Parliament and Policy in Britain: The House of Commons as a Policy Influencer', in P Norton (ed.), *Legislatures*, Oxford: OUP, 1990, p. 179.

⁴⁴ See literature review for examples of these studies.

⁴⁵ M L Mezey, *Comparative Legislatures*, Durham: Duke University Press, 1979, p. 154-5.

iii) *Legislative Viscosity*

Writing in 1970 and focusing further on the concept of constraint, Blondel *et al.* developed a series of indicators to measure the ability of a legislature to constrain the executive. They referred to this as 'legislative viscosity'⁴⁶. Viscosity they explained, was a measurement of a legislature's reactive powers; its rule-making⁴⁷ or decisional⁴⁸ functions. The description which most neatly captures the essence of viscosity however is that offered by Norton who describes it as 'the capacity [of a legislature] to interrupt the flow of a stream'⁴⁹. When a legislature is able to block, amend or modify executive proposals it is essentially interrupting the smooth flow of government legislation and can therefore be said to be exerting viscosity. In the context of the British Parliament, whilst the government may have set the stream of legislation in motion following the Queen's Speech at the start of a parliamentary session, it is the House of Commons and the House of Lords which is responsible 'for determining whether and to what extent [that stream] is allowed to continue'⁵⁰.

Although the underlying principle of his study was no different to that developed by earlier scholars such as Mezey, the utility of Blondel's concept is twofold. Firstly, the concept of viscosity is a very useful means of conceptualising the power of a legislature over the content of executive policy. Unlike some models of legislative power such as the Mezey typology, parliaments are not categorised and placed into the most appropriately fitting box or simply given a label. Rather they are placed along a continuum of legislative viscosity, ranging from those which are 'free' to those which are essentially 'compliant'⁵¹ or 'subservient'⁵². Whilst one could therefore state that a parliament has a high or low viscosity, it is equally – or perhaps more – accurate to simply state that one parliament has a greater or lower viscosity than another, or that one parliament is more compliant than another. It is therefore a measure of 'more' or 'less'; a tool by which to compare the policy influence of one parliament against that of another.

⁴⁶ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p.80.

⁴⁷ *Ibid.*, p.67.

⁴⁸ R A Packenham, 'Legislatures and Political Development', in A Kornberg and L D Musolf (eds.), *Legislatures in Developmental Perspective*, Durham: Duke University Press, 1970, p.531.

⁴⁹ P Norton, 'The Legislative Powers of Parliament' in C Flinterman *et al.* (eds.), *The Evolving Role of Parliaments in Europe*, Antwerp: Maklu, 1994, p. 21.

⁵⁰ P Norton, 'The Legislative Powers of Parliament' in C Flinterman *et al.* (eds.), *The Evolving Role of Parliaments in Europe*, Antwerp: Maklu, 1994, p. 21.

⁵¹ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p.80.

⁵² *ibid.*, p.81.

It is additionally an immensely useful tool by which to compare the policy influence of a given legislature at different points in time, or from one bill to the next. One could utilise it as a means for example of showing that a parliament was able to interrupt the flow of one government bill significantly; modifying sections through the tabling of successful amendments, adding and removing clauses, extracting concessions from the government, withholding assent or perhaps forcing the government to withdraw a bill and reintroduce it at a later date. This could then be compared to a bill which made its passage through parliament with ease; seeing very little or no modification. The former would be considered an example of a parliament having a much higher level of viscosity than the latter.

Secondly, the study developed a series of indicators of viscosity; indicators which together were believed to demonstrate a greater constraining power of a given parliament. These indicators included the number of opposition amendments tabled and passed, the number of government amendments passed, the length of debates and the number of Private Members' Bills passed⁵³. In establishing these indicators Blondel provided the tools by which one can offer an initial measurement of the constraining power of a legislature and through which they would be able to compare relatively easily with another, at least on a superficial level. The data may be time consuming to collate, but will be freely available and easily obtainable for most modern legislatures.

Blondel's discussion of legislative viscosity is often overlooked in favour of the typologies developed by Polsby and Mezey⁵⁴. However, the detailed indicators that he utilises in order to illustrate the viscosity of legislatures and the highly empirical nature of these indicators means it is ideally suited to a detailed analysis of the impact of both parliaments - and their internal mechanisms - on measures of government policy. Whilst Blondel *et al.* applied the concept and its indicators to activity taking place in a legislature as a whole and across the full legislative process, it is possible to narrow the focus and apply the concept specifically to bill committees.

⁵³ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p.81.

⁵⁴ For further details of these typologies see N W Polsby, 'Legislatures' (1975) and M Mezey (1979), 'Classifying Legislatures', both reprinted in P Norton (ed.), *Legislatures*, Oxford: OUP, 1990, pp. 129-176. Further discussion is also made in Chapter 3 of this thesis.

iv) *Applying the concept of legislative viscosity to bill committees*

It would be incorrect to argue that the underlying concept of legislative constraint has never before been applied to bill committees. Taylor for instance noted in 1951 that bill committees offered 'supreme opportunities for obstruction⁵⁵'. What follows however is an attempt to directly relate Blondel's key principles and indicators to these committees.

The two primary constraints available to legislatures - the veto and the amendment or modification of principles – are not available to bill committees in the same way. The veto method of constraint – the ability to reject a bill as a whole – does not exist. The core function of committees is that of line by line scrutiny of a bill. Committees are not empowered to consider the main principles of a bill; only the clauses and schedules within it⁵⁶. Amendments which are inconsistent with or which attempt to reverse the decision reached by the whole House at second reading are not admissible⁵⁷. Where bill committees do have a veto power it is over specific clauses and schedules within a bill and over individual amendments to these clauses rather than over the bill as a whole. Committees may veto an amendment through a division, whether this be one introduced by the government or by another committee member. Although rare, Mezey notes that bill committees 'have on occasion, been an arena for government defeat,' with for example, six defeats a year between 1971-1974⁵⁸. It can –and does- happen today⁵⁹. Erskine May for instance notes that 'there is nothing to prevent a committee from negating a clause or clauses, the omission of which may nullify or destroy the bill'⁶⁰. Although such activity is very rare, there is nothing to prevent committee members forcing a division on every amendment moved in committee.

The second and more common method of committee constraint is what Mezey describes as a 'weaker constraint'⁶¹; the adaption and modification of bills through amendments. Four types of amendment can be tabled in bill committees; government amendments, amendments from government backbenchers, opposition frontbench amendments and

⁵⁵ E Taylor, *The House of Commons at Work*, Middlesex: Penguin, 1951, p. 139.

⁵⁶ Members have the opportunity to discuss the principles of the bill at second reading, prior to a bill's committal to a bill committee.

⁵⁷ W McKay *et al.* (ed.), *Erskine May Parliamentary Practice: The Law, Privileges, Proceedings and Usage of Parliament*, 23rd Edn., London: Lexis Nexis, 2004, p.598.

⁵⁸ M L Mezey, *Comparative Legislatures*, Durham: Duke University Press, 1979, p. 97.

⁵⁹ See for example *15th Sitting, Apprenticeships, Skills, Children and Learning Bill Committee*, 26 March 2009, cols 607-609.

⁶⁰ W McKay *et al.* (ed.), *Erskine May Parliamentary Practice: The Law, Privileges, Proceedings and Usage of Parliament*, 23rd Edn., London: Lexis Nexis, 2004, p.601.

⁶¹ M L Mezey, *Comparative Legislatures*, Durham: Duke University Press, 1979, p.25.

those from the opposition backbench⁶². Constraint by these methods can be expressed in negative terms, for example the refusal of assent for a government amendment⁶³ or clause. It can also be expressed in positive terms, with the passage of government amendments introduced during committee stage or the introduction and passage of amendments tabled by members of the committee or those outside. Such modifications are generally constructive rather than destructive. Frequently, they offer a different form of constraint; one which seeks to tighten legislation and remove aspects which may be unclear; unhelpful or unnecessary. In sum, a committee has 'considerable power over a bill'⁶⁴.

It is possible to make a further distinction between the amendments passed in committee; those which receive the assent of the government and those which do not⁶⁵. Although no government minister wishes to see opposition amendments to their bill, they may assent to amendments which seek to clarify terms within it, remove unforeseen errors or to placate the opposition in place of a more obstructive amendment⁶⁶. Viscosity is not therefore something which necessarily takes place against the government's wishes. One should not look solely at occasions where amendments are made *without* the assent of the government minister as this would neglect occasions where the government have been persuaded by the arguments put forward by committee members.

To return to Norton's jigsaw analogy, bill committees have the capacity to add or remove individual pieces of the jigsaw and replace them with another. But the theme of the jigsaw which leaves a committee must be essentially the same as that which entered. We can measure the viscosity of a bill committee by considering how many pieces have been added, modified or removed in this way.

⁶² There are very occasionally amendments which could be described formally as 'cross party' such as during the Hunting Bill Committee (2002-03 session). Here amendments were described as 'Middle Way' amendments, following the formation of a 'Middle Way' parliamentary group on the issue. However, amendments such as these are rare and are described as in terms of the position of the mover of the amendment.

⁶³ M L Mezey, *Comparative Legislatures*, Durham: Duke University Press, 1979, p.25.

⁶⁴ W McKay *et al.* (ed.), *Erskine May Parliamentary Practice: The Law, Privileges, Proceedings and Usage of Parliament*, 23rd Edn., London: Lexis Nexis, 2004, p.601.

⁶⁵ J Blondel *et al.*, 'Legislative Behaviour: Some Steps Towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 80. See also A H Hanson and H V Wiseman, *Parliament at Work: A Case Book of Parliamentary Procedure*, London: Stevens & Sons Ltd, 1962, p.146.

⁶⁶ Where a government minister has agreed to a free vote in committee, the division between supporting and not supporting the amendment will depend upon the minister's comments. If the minister has not advised committee members to vote against the amendment, they can be considered to be supportive of the change. See for example, Amendment 6, 2nd Sitting, *Criminal Justice Bill Standing Committee*, 17 December 2002, cols. 25-26.

v) *Indicators of Viscosity in Bill Committees*

The analysis of legislative influence by Blondel *et al.* listed a series of indicators of viscosity. These can be modified to produce a series of indicators of committee viscosity.

a) *Indicators to Exclude*

As noted previously, not all of Blondel's original indicators are appropriate when analysing bill committee performance. This applies most obviously to the category of private members' legislation (excluded here as the analysis is solely of government bills), but also to the length of committee debates. Whilst this may be an indicator of viscosity in some legislatures, it would be wrong to interpret a long committee stage as an indication of viscosity and a short committee stage as an indicator of low viscosity. The timetabling of bills through committee is discussed by the party whips prior to the start of each committee, with a short debate then being held by the committee as a whole before a vote is taken. The length of a committee stage is often a greater indication of the attitude of the government; how important or controversial they consider a bill to be than an indicator of viscosity. A very short committee stage may, for instance, be the product of legislation that is succinct, uncomplicated and uncontroversial or of a committee stage being taken towards the end of a parliamentary session in the 'wash up' period and therefore requiring scrutiny in some haste. Similarly, a long committee stage may indicate nothing other than a very long and complicated bill, or a relatively relaxed and unpressurised timetable at the start of a parliamentary session. Both of these indicators can therefore be dismissed.

b) *Indicators to Include*

Viscosity in committee then is best viewed through the medium of individual committee amendments, clauses and schedules rather than through bills as a whole. As such, the indicators of viscosity in committee would include:

- The frequency of government amendments
- The frequency of non government amendments
- The defeat of government amendments or existing clauses or schedules in a bill⁶⁷

⁶⁷ This would not include occasions where the government have asked the committee to remove a particular clause or schedule.

Government amendments would not usually be identified as indicators of legislative viscosity. However, where government amendments are incorporating the views of the committee expressed in an earlier session, the committee is clearly exerting constraint. Even occasions where government amendments are seemingly introduced of their own accord it is important to take some account of them; however small this may be. Such an amendment may be the incorporation of the concern expressed by another Member of the House or simply the government's own recognition of an error in a bill. Either way, the committee itself is the vehicle for the change.

This is not to say that government amendments should be afforded equal weight with genuine amendments suggested by committee members and incorporated into a bill. It would be wrong however, simply to ignore them. Blondel *et al.* include government amendments in their model of legislative viscosity. In a subservient legislature a very large number of amendments would be passed. In a free legislature the number of government amendments is smaller, but not insignificant. A considerable number of government amendments would still be passed⁶⁸. In addition, the defeat or withdrawal of government amendments in committee will be a sign of constraint. A committee may simply have defeated a government amendment, or discussion of the amendment itself may have prompted the government to seek to withdraw it. It is important then to take these amendments into account and to incorporate them into any measurement of viscosity.

vi) *Legislative Viscosity and the Milder Influences of Committees*

Measuring these indicators of viscosity will build a picture of the activity taking place within each bill committee. However, it is additionally important to consider what Blondel *et al.* describe as the 'milder influence'⁶⁹ of committees in the House of Commons. These milder influences can be seen in two stages; within the committee itself and at Report Stage.

MPs tabling substantive amendments in bill committees may seek to make a change to the wording of the bill under discussion, but this outcome is not always achieved. In these circumstances there are four additional ways in which a committee can exert viscosity:

⁶⁸ See J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 81.

⁶⁹ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 79.

1. A change may be agreed to, but implemented through other means, such as in the regulations, guidance or code of conduct accompanying a bill. Occasionally, both the Government and an opposition member may table a similar amendment or the Government may sign an opposition amendment which would then be listed as a Government amendment on the Order Paper. All such instances fall within the category referred to henceforth as the 'change made through other means' or simply 'change made' category. A change has been prompted to the bill or to its implementation by the process of committee scrutiny, but this would not be directly observable from the consideration of formal amendments alone.
2. The Minister may promise to 'reconsider' or 'look again' at an amendment proposed in committee. This is not a commitment to make an amendment to a government bill. Rather, it is an undertaking that an issue raised by a Member will be taken further.
3. The Minister may make a commitment to table an original or redrafted amendment at the Report stage of the bill. This is usually due to drafting considerations, or the need to confirm with officials that a measure is not already addressed within a bill.
4. A compromise may be reached to alleviate the concerns of the Member moving the amendment. This could include an undertaking from the Minister to meet with outside groups or the guarantee that MPs may make representations to a forthcoming consultation.

Committees are arguably exerting viscosity here, forcing the government minister to take some action or further revision, although this is not the sort of viscosity that would be recorded by the consideration of Blondel's formal indicators alone. An accurate portrayal of the difference that bill committees make to legislation should therefore seek to include these occasions alongside the more overt acceptance of amendments during bill committees themselves.

Additionally, an amendment may be introduced at Report Stage which was pressed for during the committee stage. MPs tabling amendments may themselves seek to withdraw them after consideration by the committee only to table them again for consideration at

Report. If such amendments are accepted or introduced by the Government at Report Stage it should be considered that it was the bill committee which had prompted such action. In a similar vein to committee stage, compromises may also be agreed by the Government at Report Stage, prompted by committee discussions, or changes may be made through alternative means such as within the regulations accompanying a bill.

It is therefore important to add two additional indicators of viscosity to those described earlier:

- The undertakings given by ministers during committee sessions
- The incorporation of committee concerns into government amendments at report stage and later on in the legislative process

A comprehensive list of these indicators is summarised in Appendix 1.

Hypotheses

When examining the work of bill committees the most obvious starting point is a focus on committee output; the product or impact of the committee stage on legislation. Taking the key features of viscosity as a starting point, it is possible to state three initial hypotheses or propositions:

- i) The constraint exerted by bill committees during committee stage is minimal with little impact on government legislation.*

Given the predominant view of the bill committee stage as a very weak element of the legislative process it seems fair to assert that the contemporary findings from a sample of modern bill committees will not fundamentally challenge this. The large parliamentary majorities held by the governments elected in 1997, 2001 and 2005 mean that it is very unlikely that – in terms of formal amendments at least – bill committees will have been able to make great change to legislation. Where changes have been made as a result of formal amendments moved and agreed to in committee these are likely to be only very minor changes. This is not to say that substantive change will be non-existent; it is expected that a few key and important changes will have been made during bill committee proceedings.

ii) The impact of bill committees is greater in later stages of the parliamentary process

Whilst the constraint exerted by committees in terms of formal amendments in committee sittings themselves is expected to be small, the 'milder influence' of bill committees is expected to be significantly greater. The number of ministerial undertakings to consider a matter further is likely to be much higher than the number of amendments agreed to in committee. Analysis of the report stage of bills should find that at least a small proportion of these undertakings result in policy change. That is, the bill committee will have prompted a wider range of change to government bills than would appear to be the case on the basis of the formal transcript of committee sittings alone.

iii) Bill committees can constrain the government to a much greater degree than that commonly noted in the literature.

Taking both the formal passage of amendments in committee and at later stages of the parliamentary process into account, it is expected that both the capacity of bill committees to exert constraint and the actual exercise of this power is much greater than typically noted in the existing literature.

iv) The viscosity of bill committees will increase if the committee contains MPs with high levels of specialisation in the subject area under discussion.

It is expected that the nature of appointments to bill committees means that whilst specialisation will not be as great as that found in select committees, some level of specialisation will be present. This specialisation is likely to be inconsistent with some committees containing a higher number of MPs with specialisation in the subject area than others. It is expected that where committees contain high numbers of Members with specialisation, the potential to exert viscosity will be greater. Members with prior knowledge of a subject area will be better placed to scrutinise a bill; to draft amendments, ask pertinent questions of the government minister and that their arguments would be expected to carry more weight than those of their unspecialised colleagues.

- v) *The introduction of oral evidence sessions as standard committee procedure has increased viscosity.*

Given that Members of Parliament have long called for the Special Standing Committee procedures to be used more widely when scrutinising legislation⁷⁰, it is expected that much value is to be found in the use of oral evidence as a more standard procedure. One would hypothesise that oral evidence sessions would provide committee members with the opportunity to gain first hand expert opinion on specific parts of the bill and of amendments which may already have been tabled. The views expressed by witnesses would thus directly inform the line by line scrutiny, increasing the capacity of committees to constrain the government.

Structure of the Thesis

The main body of the thesis (Chapter 4 onwards) begins with an overview of the work of bill committees over the 2000-2010 period, focusing on the major changes to legislative committees through a direct comparison with the findings presented by Griffith. These changes include the time spent scrutinising government bills, the quantity of amendments moved or discussed in committee and the attendance of MPs at committee sittings. This establishes the context in which modern bill committees operate and offers an insight into the potential for viscosity to be exerted.

Chapter 5 offers an analysis of the most visible sign of committee constraint: the passage of formal amendments to government bills. A series of indicators of viscosity are discussed here, including the frequency of successful government amendments, the frequency of successful non government amendments and the defeat of government amendments in committee. More detailed analysis of these indicators finds that strong committee discipline and an increasing ministerial reluctance to accept amendments limits the capacity for viscosity to be exerted in a formal manner. Alternative means of constraint, through ministerial undertakings, are more important.

The analysis of the undertakings given by ministers in committee constitutes the focus of Chapter 6 where a breakdown of the different forms of ministerial undertakings is offered.

⁷⁰ It had been recommended on at least four occasions by eight individual Members or bodies. They include Andrew Tyrie MP, the Commission to Strengthen Parliament and the House of Lords Select Committee on the Constitution.

This includes changes made to other areas of the bill such as the accompanying regulations, undertakings to reconsider amendments moved by committee members or commitments to table government amendments in response to committee amendments at the report stage of the bill. The importance of report stage as a crucial arena for committee viscosity is also highlighted, with an analysis of the frequency of government amendments introduced at report stage which respond directly to committee concerns. Four reasons are proposed for the value of report stage for committee viscosity, including the domination of committee members in the report stage debate, the necessity for the redrafting of non government amendments and the need for departmental and/or Cabinet approval of amendments. A case study of the NHS Redress Bill (2005-06) demonstrates the impact that a bill committee can have on government legislation through these less visible constraints. Additionally, it is demonstrated how the behaviour of MPs in committees can maximise their legislative impact.

The final chapters focus on two variables which may affect the viscosity of bill committees; the specialisation of committee members and the introduction of oral evidence as a standard procedure during the 2006-07 session. Chapter 7 demonstrates the levels of specialisation present in bill committees across the sample, finding that they are more highly specialised than is traditionally thought. The impact of specialisation is then tested against the formal and informal indicators of viscosity established earlier. This includes the effect of specialisation on the number and success of formal committee amendments and on the frequency and form of ministerial undertaking given. It offers evidence that backbench specialisation in particular can lead to more effective scrutiny in committee, with a much higher success rate, particularly in terms of ministerial undertakings. Chapter 8 assesses the impact of the reforms made to legislative committees in the 2006-07 parliamentary session. The focus here is primarily on the impact of oral evidence taking, though written evidence is also referred to where appropriate. Once again it considers the impact of evidence taking on the established indicators of viscosity, finding that the greatest impact of oral evidence has been with regards to the frequency of ministerial undertakings. A case study of the Health and Social Care Bill (2007-08) demonstrates the impact oral evidence can have on the capacity of a committee to constrain the government. Notable behavioural changes in evidence taking committees are also considered, including the use of oral evidence sessions in assisting MPs with the drafting and tabling of amendments, as evidence to reinforce points made in committee debate and as an arena in which to trail amendments which MPs hope to introduce. It

concludes that the new oral evidence taking procedures have considerably enhanced the capacity of bill committees to exert constraint.

The thesis concludes with a broader consideration of bill committees as distinct features of parliamentary scrutiny and of the contribution of this research to the field of legislative studies, with suggestions of areas for further research.

2. Sample and Methodology

Do Committees Make a Difference?

The methodological approach taken in this examination of bill committees will be in line with the approach taken by Griffith in his famous study. It does not however seek to precisely replicate the methods employed by Griffith. Rather it will utilise the approach taken, refining small areas of detail and accounting for contemporary committee developments. This will ensure that the methodological approach taken facilitates a reliable and accurate assessment of committee performance whilst at the same time enabling some direct comparisons to be made with this previous study. The methodology is also similar to that being currently used in a study by the Constitution Unit at University College London⁷¹, although there are some key differences in approach. Thus, comparisons will also be able to be made directly with the findings in this study. In particular the findings of these two studies will complement each other well.

Quantitative Sample

The research includes the sittings of bill committees over a ten year period. This allows a sufficient 'pre-change' and 'post change' period⁷², encompassing roughly equal numbers of standing committee and public bill committee sessions. Data compiled by the House of Commons Library shows that 1289 bills were tabled during the 2000/01 – 2009/10 parliamentary sessions, of which 352 received Royal Assent⁷³. It would not have been feasible to include all of these bills in the sample; neither would the inclusion of all bills necessarily bring the most accurate results. Three important issues were taken into account when compiling the sample of bills; the type of bill to be included, the form of scrutiny undertaken and the success of bills.

⁷¹ This study involves the tracking of amendments made to ten case study bills in the 2005 Parliament. The key methodological differences with the research undertaken in this thesis are outlined later in this chapter. For further details see M Russell *et al.*, 'A Measurable Difference: Assessing the Westminster Parliament's Impact on Government Legislation, 2005-2010', *Paper presented at ECPR Parliaments Conference, Dublin*, 25 June 2012.

⁷² K E Hamm and G Moncrief, 'Effects of Structural Change in Legislative Committee Systems On Their Performance in US States', *Legislative Studies Quarterly*, 2, 3, 1982, p. 383.

⁷³ Figures calculated from *Summary of Bills introduced since 1979*, House of Commons Library, Standard Note SN/PC/02283, 27 May 2010, <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snpc-02283.pdf>

i) *Type of Bill*

Some bills were excluded immediately, for example, those which did not receive a committee stage in the House of Commons, such as the Constitutional Reform [HL] bill during the 2003-04 session. The remaining sample comprised of government bills and Private Members' Bills, including those introduced under the ballot procedure, bills introduced under Standing Order 57⁷⁴, those introduced under the Ten Minute Rule Motion (Standing Order 19) and bills which began in the House of Lords.

Previous studies have discussed the benefits and drawbacks of including Private Members' Bills in analyses of legislation. Whilst Griffith included only government bills in his sample of legislation, Burton and Drewry offer evidence that the inclusion of Private Members' Bills is necessary given that 'constitutionally, backbench bills have exactly the same status as government ones'⁷⁵. They highlight however, the distinctive procedural and timetabling rules which these bills are subject to in the Commons⁷⁶. This in particular could have presented a problem in this research as committees considering Private Members' Bills do not generally have the power to take written and oral evidence. The new procedures introduced in the 2006 reforms would therefore not necessarily be evident in these committees. Whilst it could be pertinent to assess whether bill committees had a greater capacity or inclination to amend Private Members' Bills, it would be difficult to distinguish between those which were truly backbench bills and those which were for example, government bills handed to those Members who were successful in the annual ballot. An earlier study by Borthwick also dismissed the use of Private Members' Bills for the majority of the analysis given the very short amount of time that such bills spent in standing committee. He noted that it would 'not reveal the full extent of the Government Opposition relationship'⁷⁷. For these reasons, all categories of Private Members' Bills were excluded from the sample.

Whilst there was no question that government bills should be included in the sample of bills analysed, consideration was given as to whether all government bills should be included or whether distinctions should be made between the various types of bill. The most controversial type of bill is the annual Finance Bill and associated financial

⁷⁴ Standing Order 57 permits any Member of Parliament to introduce a bill providing they have given due notice. Such a bill must not be presented until all 'balloted' Private Members' Bills have been presented and received a second reading.

⁷⁵ I Burton and G Drewry, *Legislation and Public Policy: Public Bills in the 1970-74 Parliament*, London: Macmillan Press, 1981, p.215.

⁷⁶ *ibid.*

⁷⁷ See R L Borthwick, *The Standing Committees of the House of Commons: A Study of Membership, Procedure and Working between 1945 and 1959*, *Unpublished PhD Thesis*, University of Nottingham, 1967, p. 170.

legislation such as Consolidated Fund Bills. These bills are not scrutinised in the same manner in each parliamentary session, with the Finance Bill often split between a bill committee and Committee of the Whole House. Whilst Standing Order 63 excludes Consolidated Fund or Appropriation Bills from bill committees⁷⁸, Consolidation Bills can have a committee stage, although there is provision for a minister to request that a bill not be committed to a bill committee, under Standing Order 58⁷⁹. Neither are these bills usually subject to programming, which makes them ineligible for the new oral and written evidence taking procedures. Finance Bills are also arguably of much greater political importance to the Government. Burton and Drewry describe them as being of 'supreme importance both in [their] high political controversy and in the history of Parliament in its struggles with the Crown'⁸⁰. Any consideration of these bills may therefore distort the results somewhat. Griffith excluded such bills from his study on the grounds that they often covered largely administrative matters and ranged widely, from 'the smallest and most technical to general issues of economic policy'⁸¹. Finance and related bills were not therefore included in the sample⁸². The Finance Bill is not the only bill to be considered in both Committee of the Whole House and in Standing Committee. Others, such as the Hunting Bill (later the Hunting Act 2001) have also been split between the two forms of committee. These bills were included in the sample. Other Consolidation bills considered by the Joint Committee on Consolidation Bills were excluded.

An additional category of government bill is emergency legislation, which can proceed through its parliamentary stages in a matter of days. Emergency legislation presents similar problems to the annual Finance Bill; it will usually be of great political and often national importance. It will also most likely, but not necessarily, be considered in a Committee of the Whole House. There will inevitably be some parliamentary sessions when more emergency legislation is introduced than in others. Given that the inclusion of these bills could also distort the results, presenting a different portrayal of committee scrutiny than that which is the norm in the House, emergency legislation was also excluded from the sample. In order to ensure continuity in terms of the types of government bill included in the study and to avoid the need for subjective judgements to

⁷⁸ W McKay *et al.* (ed.), *Erskine May Parliamentary Practice: The Law, Privileges, Proceedings and Usage of Parliament*, 23rd Edn., London: Lexis Nexis, 2004, p. 590.

⁷⁹ Standing Order 58, *Standing Orders of the House of Commons*, January 2009, <http://www.publications.parliament.uk/pa/cm200809/cmstords/2/2.pdf>, (accessed 19 October 2009).

⁸⁰ I Burton, I and G Drewry, *Legislation and Public Policy: Public Bills in the 1970-74 Parliament*, London: Macmillan Press, 1981, p.175.

⁸¹ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p.34.

⁸² Jennings also excluded finance bills from his analysis of the length of time Parliament spent considering legislation on the grounds that 'little of it is really legislation'. W I Jennings, *Parliament*, Reprinted Edn, Cambridge: Cambridge University Press, 1948, p. 5.

be made regarding emergency legislation, the sample included only those bills outlined in the Queen's Speech at the start of each parliamentary session.

ii) Method of Scrutiny

Secondly, it is necessary to address the committee proceedings and the passage of the bill itself. As already established, some legislation is considered in a Committee of the Whole House rather than in bill committees. Bills considered in the former are subject to a very different atmosphere and present problems when examining key internal variables such as the level of specialisation. All bills which receive their entire committee stage in Committee of the Whole House were therefore excluded from the sample. A small number of bills are also referred to a Select Committee for scrutiny. Here, a series of oral evidence sessions are held before the committee moves to traditional line by line scrutiny common to standing committees. The vast majority of these bills received scrutiny by a Joint Select Committee, composed of members of both Houses⁸³. With the focus of the study being upon the impact of legislative committees in the House of Commons, bills receiving scrutiny in this manner were also excluded from the sample. Only two bills - the Adoption and Children Bill during 2000-01 and the Crossrail (Hybrid) Bill in the 2005-06 session were referred to a House of Commons Select Committee during the period under study. Whilst there is value in considering the scrutiny of legislation by select committees, it serves little purpose to consider such a small sample of bills here; any conclusions would inhibit any generalisation of the effectiveness of select committees engaging in legislative scrutiny. These bills were therefore also excluded from the sample.

iii) Success of Bills

Finally, it was pertinent to consider whether the sample should include all of the bills which met the above criteria, or only those which received Royal Assent, whether this assent was given in the session in question or following carry over into the following session⁸⁴. The overwhelming reason for including bills which do not receive Royal Assent is that one could be overlooking an indicator of the viscosity or impact of bill committees; if a bill is withdrawn it could potentially be the product of a troublesome committee stage. As long as a bill completes its committee stage, it is possible to offer an assessment of the modifications sought in committee, even if the bill does not complete its passage.

⁸³ The Parliamentary Costs Bill during the 2005-06 session and the Income Tax Bill in the 2006-07 for example, both received scrutiny by a Joint Select Committee.

⁸⁴ Bills which are carried over into the following parliamentary session will be coded within the session in which bill committee stage took place. Carry over bills which had a committee stage in both sessions are included in both.

Furthermore, the actual quantity of government bills not receiving Royal Assent is very low. Of the 1289 bills tabled between 2000/01 and 2009/10, 344 were government bills, of which 304 received Royal Assent⁸⁵. Thus, only 40 bills across a ten year period failed to receive Royal Assent⁸⁶. It was therefore not problematic to include this category of bills in the sample, although they were coded separately from those which did receive Royal Assent in order that they could be isolated if and where necessary.

The sample is thus representative and purposive, in order to ensure continuity in the bills considered across each parliamentary session and to avoid the need to apply subjective judgements to each bill. Equal weight is given to both standing committees and public bill committees, allowing the effects of the 2006 committee reforms to be determined. The full sample includes 139 government bills. A full breakdown is displayed in Appendix 2: Sample of Government Bills. The main collection point for data regarding each of the committees within the sample is from the bill committee pages of the UK Parliament Website⁸⁷. Transcripts of bill committee proceedings were analysed directly from this site.

Qualitative Sample

The quantitative sample of legislation receiving scrutiny in bill committees has been supplemented by qualitative data collection. This includes a series of interviews with Members of Parliament, parliamentary officials and interest groups.

The sample of MPs to be interviewed was representative, with the aim of targeting those Members who had recently served on bill committees and those who had served in the House long enough to observe the changes made to bill committees during the period under study. Ideally, the sample was to include: government ministers, shadow ministers and spokespersons, backbench MPs from the three main political parties and clerks staffing the committees in question.

Bill committee proceedings are often highly detailed and technical and it was questionable whether interviewing MPs regarding specific bill committees sitting in previous sessions

⁸⁵ Figures taken from *Summary of Bills introduced since 1979*, House of Commons Library, Standard Note SN/PC/02283, 27 May 2010, <http://www.parliament.uk/commons/lib/research/briefings/snpc-02283.pdf>. It is an indicator of the quantity of government bills receiving Royal Assent and does not take into account the exclusions noted previously for this sample.

⁸⁶ This includes bills which were carried over into the following parliamentary session as well as those which were withdrawn.

⁸⁷ *Public Bill Committees, UK Parliament*, http://www.parliament.uk/business/committees/public_bill.cfm, (accessed from 3 October 2009).

would be worthwhile and likely to be accurate. Thus, interviews regarding the work of specific bill committees were only sought for those taking place around the time of data collection, in this case the 2009-10 session. All members of the first two bill committees taking place in the 2009-10 session⁸⁸ were contacted regarding their availability for interview. Nine MPs from these committees agreed to be interviewed and the interviews took place between February and July 2010. The content of these interviews focused largely upon the relevant bill committee, but was not limited to this. The discussion was widened to cover their opinions and experiences of serving on bill committees more generally. Contact was also made with the Clerks' Department during this period and an informal interview was held with the Head of the Scrutiny Unit in July 2010.

A second group of broader interviews was also conducted, to offer an assessment of the work of bill committees since the 2000-01 parliamentary session and to gauge the impact of the 2006 reforms. Here it was necessary to speak to Members who were elected no later than the 1997 General Election and who would therefore be able to offer insights into committees spanning the full ten year period. At the research design stage, *Dod's Parliamentary Companion* showed that 428 current Members of the House had been first elected during or before the 2000-01 parliamentary session⁸⁹. This accounted for over 60 per cent of all MPs in the 2005 Parliament. The pool of potential interviewees was therefore large. However, the interview period (February 2010 onwards) coincided with the 2010 General Election and as such it proved difficult to arrange as many interviews as anticipated; MPs were spending a great deal of time in their constituencies. MPs elected in 2001 and 2005 were thus also contacted and offered some useful perspectives on committee work. These interviews had great utility despite the obvious inability of interviewees to comment on the full period under study. The considerable turnover of MPs following the 2010 General Election also hampered the interview process and further interviews were therefore carried out sporadically in the following (2010-12) parliamentary session. Those interviewed however included front and backbench MPs from all three main parties and former party whips.

A final group of interviews were conducted in autumn 2012 to supplement the data collection and to triangulate the findings. This included an interview with the Clerk of Bills, a civil servant working with bill committees and a representative of an interest group

⁸⁸ Providing that the bill fit the criteria for the sample.

⁸⁹ Figures calculated from profiles of MPs in *Dod's parliamentary Companion 2010, 178th Edn.*, London: Whittaker, 2009, pp. 67-378.

which had been referred to on many occasions by Members of Parliament in previous interviews. In total, 22 interviews were conducted (see Appendix 6 for a full breakdown).

All interviews took a semi-structured format. This allowed for the broad themes of the research to be covered, but also enabled Members to discuss in more detail the issues which were of particular interest to them. This approach worked well and proved highly informative, with MPs often recalling their personal experiences of moving amendments in bill committees or of working with their colleagues to persuade ministers of the value of amendments. All of the interviews were recorded unless the interviewee requested otherwise and participants were invited to review a formal transcript of the interview, though in practice only two chose to do so. Interviewees were advised that all comments would remain anonymous, unless they stated otherwise.

Outputs: Measuring the impact of bill committees

i) Coding of Amendments

The primary form of data collection employed here is the counting and coding of bill committee amendments. Although some academics such as Kreppel claim that ‘simple amendment counts’⁹⁰ are relied upon too heavily in analyses of legislative impact, it is an inevitable and very necessary point of departure. Blondel *et al.* noted that ‘the origin, number and fate of these amendments are all indicative of ... the viscosity of the process’⁹¹. Each amendment moved or discussed in bill committee was therefore ascribed codes along these lines. Codes included the origin (parliamentary session, bill, clause or schedule and author) and the fate or outcome (agreed, agreed to on division, defeated on division or withdrawn). In total over 24,000 committee amendments were coded⁹². Appendix 3 gives a small illustration of this coding for a selected group of amendments.

When considering the outcome of amendments, the milder influence of amendments was also coded for along the lines of the types of influence outlined earlier; change made, report stage commitment, reconsideration and compromise. *Table 1* gives examples of how these undertakings were coded.

⁹⁰ A Kreppel, ‘Moving Beyond Procedure: An Empirical Analysis of European Parliament Legislative Influence’, *Comparative Political Studies*, 35, 7, September 2002, p. 801.

⁹¹ J Blondel *et al.*, ‘Legislative Behaviour: Some Steps towards a Cross National Measurement’, *Government and Opposition*, 5, 1, 1970, p. 80.

⁹² A total of 24,223 amendments from bill committees were coded in this way.

Table 1. The Milder Influence of Bill Committees

Type of Influence	Description
Change Made	<ul style="list-style-type: none"> • Change made through other means i.e guidance/regulations • Government and Opposition introduced similar amendment • Government make changes to opposition amendment and re-table in committee • Minister agrees to concession on government amendment • Government sign an opposition amendment
Report Stage Commitment	<ul style="list-style-type: none"> • Promise to introduce amendment at Report Stage
Re-Consideration	<ul style="list-style-type: none"> • Commitment to 'look again', 'reconsider' an amendment or to discuss the amendment with departmental colleagues or Parliamentary Counsel
Compromise	<ul style="list-style-type: none"> • Promise to take action in future legislation • Meeting with those concerned/ outside groups • MPs and/or outside groups encouraged to submit concerns to government consultation

Despite the views of Kreppel, in reality any quantitative analysis of legislative amendments is far from 'simple'. Indeed, in the committee context for instance, Blondel *et al.* note that despite a series of attempts to classify the amendments tabled or passed in standing committees, their impact remains 'difficult to measure'⁹³. Although the coding of amendments allows the production of very basic quantitative indicators, it assumes that every amendment is of equal value and effect. In reality this is not the case. An amendment to correct a typographical error in a bill is clearly of less importance than one which increases a financial penalty and thus, should be coded differently. For this reason Blondel *et al.* note that even comparisons of committees within the *same* legislature rely heavily on qualitative judgements of whether the modifications made are 'more' or 'less' important than another⁹⁴. There is as yet no consensus as to the most accurate method by which to measure this with any certain degree accuracy; in many respects it will always

⁹³ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p.78.

⁹⁴ *ibid.*, p. 71.

remain subjective. To aid the accuracy of the data collection however, each committee amendment was also ascribed a qualitative code.

Previous studies seeking to place a qualitative value on the types of amendments and bills have used a coding framework with two or three levels of substantiveness. When classifying types of bill for example, Burton and Drewry used a simple dichotomy of policy versus administrative bills⁹⁵ whilst Shephard and Cairney's study of amendments in the Scottish Parliament uses three categories: typographical and consequential amendments, detail or clarificatory amendments and substantive amendments⁹⁶. For the purposes of this study a similar approach is taken to the Burton and Drewry study, with two categories being applied; managerial and substantial amendments⁹⁷.

Managerial Amendments: This includes additions or removals of clauses, schedules, lines or words for the purpose of clarification or ease of application.

Substantial Amendments: This includes the addition or removal of clauses, schedules, lines or words which change the aim, purpose or subject of the clause or schedule in question.

Using a two tier coding frame for the substantiveness of amendments marks a fundamental methodological difference between this study and that currently being undertaken by the Constitution Unit⁹⁸. There are two reasons for this decision. Firstly, accurate coding for substantiveness is complex, requiring detailed knowledge of policy and of legal terminology and the time burden is great. The study by Russell *et al.* at the Constitution Unit involves a team of coders and includes those with a political science and a legal background⁹⁹. With only one coder, this study aimed for both accuracy and simplicity. A simple dichotomous coding scheme for the substantiveness of amendments facilitates this. It increases the accuracy of the label being given to an amendment and allows the coding of greater numbers of amendments.

⁹⁵ I Burton, I, and G Drewry, *Legislation and Public Policy: Public Bills in the 1970-74 Parliament*, London: Macmillan Press, 1981, pp.36 – 37.

⁹⁶ M Shephard and P Cairney, 'The Impact of the Scottish Parliament in Amending Executive Legislation', *Political Studies*, 53, 2, 2005, p. 309.

⁹⁷ See Appendix 5 for a more explicit breakdown of managerial and substantial amendments.

⁹⁸ There are also differences in terms of the sample and focus of the research. Whilst this study considers a large number of bill committees in detail, the Constitution Unit study analyses a much smaller number of case study bills, but follows these bills through the whole process of parliamentary scrutiny – encompassing both Commons and Lords amendments.

⁹⁹ See M Russell *et al.*, 'A Measurable Difference: Assessing the Westminster Parliament's Impact on Government Legislation 2005-10', *Paper presented at the ECPR Conference, Dublin, 24-27 June 2012*

All amendments formally moved or grouped and discussed within committee were coded in this way. When doing so, it was necessary to consider the proposed changes of the amendment and the arguments of those speaking to the amendment. This again contrasts to the approach taken by Russell *et al.* who coded on the basis of their own interpretation of 'actual legislative effect, rather than the intention of the mover'¹⁰⁰. Again, the approach taken here has the intention of improving the consistency of the coding. In a similar vein, the coding took no account of the views of the government minister. For instance, if the amendment introduced a measure which the government believed was already covered in another aspect of the bill or in existing legislation, it would still be categorised as a substantial amendment. Where a consequential amendment(s) accompanied a substantial amendment (for example, an amendment to remove a line of the bill falling within the same group as an amendment to replace it), they were coded as managerial if referred to as such by the MP moving the amendment or if explicit in the wording of the amendment. Where a member tabled a series of identical substantial amendments, the lead amendment would be coded as substantial and the two consequential amendments as managerial, as these were required so that the remainder of the bill was consistent with the change¹⁰¹. If unclear, an amendment was coded as managerial¹⁰². This was to ensure that on no occasion was committee work or impact overestimated.

In addition, the intention of the mover when tabling the amendment was also taken into account. Some amendments are tabled simply as a way of gaining more information on a topic or to clarify the Government's thinking on an issue. These are usually referred to by committee members as probing amendments. As Members tabling probing amendments do not intend them to be accepted by the committee and will not usually push them to a division, it seemed pertinent to include a code for this. Every amendment was therefore coded as being either probing or substantive. To ensure consistency in the coding an amendment was only classified as probing if explicitly stated as such by the committee member moving the amendment. This did not have to be stated when moving the amendment. Any admission during the debate on the amendment that it was probing would be coded as such. Other terminology used when moving or speaking to amendments which suggested that the amendment(s) were being used to probe the Government were also coded as being probing. These included 'exploratory' amendments, those amendments designed to 'test' the Government or to 'tease out' an explanation and

¹⁰⁰ M Russell *et al.*, 'A Measurable Difference: Assessing the Westminster Parliament's Impact on Government Legislation 2005-10', *Paper presented at the ECPR Conference, Dublin, 24-27 June 2012*, p. 7.

¹⁰¹ See for example, amendments 11, 12 and 13, *Criminal Justice and Police Bill Standing Committee*, 2001.

¹⁰² See Appendix 5 for further details of these classifications.

amendments described as being tabled to 'plot territory' or to 'set a marker'. Amendments described as probing amendments by another committee member were not classified as such without supporting evidence from the mover(s) themselves.

The viscosity of bill committees is quantified in two ways utilising the coding applied to committee amendments. Firstly through a simple count of the number of successful amendments which is then disaggregated into government and non government amendments. This includes measurements of the different types of committee amendment which may be successful¹⁰³:

- Government amendments passed by the committee
- Amendments from government backbenchers passed *with* the assent of the government
- Opposition amendments passed *with* the assent of the government
- Amendments from government backbenchers passed *without* the assent of the government
- Opposition amendments passed *without* the assent of the government

Whilst those amendments passed *with* the assent of the government can include those passed with or without a division, the last two types of amendment (both passed *without* the assent of the government) can only be the product of a division in committee. All amendments will be coded accordingly. This allowed for example, the proportions of successful government and non government amendments to be presented. It also allows distinctions to be made between government backbench amendments and opposition amendments.

Coding in this manner allows a very basic scale of those committees which could be deemed to be 'free' against those which were essentially 'compliant'. A compliant committee with little viscosity would be expected to pass no non government amendments or those which were largely managerial in nature, whilst a free committee

¹⁰³ Adapted from J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, pp. 80-81.

with a higher degree of viscosity would pass either a larger number of simple non government amendments or those which are more substantial in nature. The milder influences of committees were coded in a similar manner, allowing similar distinctions to be made between non government and government amendments and between government backbenchers and opposition MPs.

ii) Coding of Report Stage Amendments

In addition to the coding of bill committee amendments, all amendments moved or discussed at the Report Stage of the bills were also coded. The coding process here was essentially the same. Amendments were coded for origin, substantiveness and fate in an identical manner to the coding undertaken during committee stage. A series of other codes were also applied:

- Whether the amendment had been discussed in the earlier bill committee: This does not necessarily mean that the text of the amendment is identical, but that the specific theme or purpose of the amendment had already been discussed in committee.
- Whether the amendment was a response to an undertaking given in committee (government amendments only): In line with the precedent set when considering the substantiveness of amendments, government amendments moved at report stage were only coded as being a response to committee if they were explicitly referred to as such by the minister moving the amendment. Although this would most likely lead to an underestimation of the number of undertakings which were acted on at report stage, it ensures that each amendment coded as such is truly accurate and removes the need for subjective judgements.

iii) Methodological Limitations

The coding of such a large number of amendments in this way is not without problems. Most obviously, data collection relies upon the correct listing of amendments and proceedings in the Official Report. Online material regarding amendment lists and committee proceedings is much more detailed in very recent parliamentary sessions than for those at the start of the study. It is thus easier to ensure the accuracy regarding the authorship of amendments for later sessions within the sample. The research is inevitably limited by human error; both within the coding of amendments and within the presentation of proceedings in the Official Report itself. However, these limitations are similar to those experienced by academics in previous studies. Griffith for example notes

in his work that the notices of amendments and minutes of committee proceedings do not 'yield the full information'¹⁰⁴ and on several occasions corrects mistakes which have been made by Hansard¹⁰⁵.

Whilst the coding of amendments is very detailed, it must be remembered that the results remain only an estimate of the policy impact of bill committees. The methodology brings with it problems of both over and underestimation of committee impact. One can never be absolutely certain that a change has been prompted *solely* by a bill committee. Rather, it may be a culmination of the work of other internal actors such as select committees and wider parliamentary campaigns by MPs or the result of wider external pressures and lobbying by interested groups. A good example of this is the ban on smoking in public places, introduced as a result of the Health bill in the 2005-06 parliamentary session. The issue had previously been considered by the Health Select Committee who produced a response to the published bill in 2005¹⁰⁶. The committee argued that the partial ban should be extended to a full ban which would for example, cover pubs which did not serve food as well as those which did. Research by Russell and Benton suggests that the committee 'provided crucial political reinforcement,' and acted as a 'tipping point'¹⁰⁷ for the full ban. Yet this issue was also considered in great detail by the Health Bill Standing Committee, with debate regarding the extent of the smoking ban covering 5 sittings of the committee and over 30 amendments by opposition MPs. It is not clear therefore, which of the two committees (if either) actually prompted the change which was passed on a free vote at report stage. Russell and Benton admit that the Health Select Committee was working in a 'crowded field'¹⁰⁸ and by implication, so too was the bill committee. Additionally, there is no guarantee that changes would not have been made anyway by the government had they not been raised in committee.

Conversely, the methodology used may also underestimate bill committee influence, particularly when considering the report stage of government bills. Amendments tabled by the government at report stage are only coded as being influenced by the bill committee if this is made explicitly clear by the Minister when moving or speaking to the amendment¹⁰⁹. There will inevitably be other government amendments tabled in response

¹⁰⁴ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 259.

¹⁰⁵ *ibid.*, p. 144.

¹⁰⁶ 'Smoking in Public Places', *Health Select Committee, First Report of Session 2005-06*, HC 485.

¹⁰⁷ M Russell and M Benton, *Selective Influence: The Policy Impact of House of Commons Select Committees*, Constitution Unit, 2011, p. 74.

¹⁰⁸ *ibid.*, p. 77.

¹⁰⁹ Occasionally such comments can also be seen during the third reading of a bill.

to committee discussions in which no credit is given to the bill committee during the debate or where it is not explicitly clear that an amendment corresponds to one tabled in committee. To some extent this also depends on the presentation of amendments in the Hansard report of proceedings. With very long bills, or those in which time is very short, government amendments are not always listed in full. This makes it much more difficult to code all government amendments properly¹¹⁰. As such, committee influence may be being underestimated.

Input Machinery: The variables which may affect the viscosity of bill committees

i) Initial Indicators: Attendance at Committees and Time Spent in Committee

The time spent in bill committee is an important indicator of the potential for viscosity to be exerted. This has therefore been calculated for each of the bills in the full quantitative sample from the times recorded within the official transcripts of bill committee proceedings¹¹¹. This covers all proceedings taking place within the committee, with the exception of temporary suspensions of proceedings during divisions in the House and the evidence taking sessions held by public bill committees or by Special Standing Committee¹¹² in the pre-2006 period.

The attendance of Members at committee sittings is an additional indicator of the potential for committees to constrain government legislation. Walkland for example saw this as an expression of the 'general unpopularity'¹¹³ of committee work. Attendance at committee sessions was therefore also mapped. The list of committee members and those which have attended each session, are available at the start of the transcripts of committee proceedings, as published on the UK Parliament Website¹¹⁴. Although not entirely accurate, given that they record only attendance at the start of a sitting and do not take into account the frequency in which Members leave the room, they are an indicator of the willingness of Members to participate in bill committee work. The attendance levels of each individual member of a committee (excluding whips) have therefore been calculated

¹¹⁰ Hansard will often state 'remaining government amendments agreed to' at the end of a debate or section of a debate if a knife falls. On such occasions the text of government amendments will not be listed.

¹¹¹ *Public Bill Committees*, <http://www.publications.parliament.uk/pa/cm/stand.htm>, (accessed 2 December 2009).

¹¹² The Adoption and Children Bill during the 2001-02 session was scrutinised under the Special Standing Committee procedure.

¹¹³ S A Walkland, 'Committees in the British House of Commons', in J D Lees and M Shaw, (eds.), *Committees in Legislatures*, Oxford: Duke University Press, 1979, p. 255.

¹¹⁴ *Public Bill Committees, UK Parliament*, http://www.parliament.uk/business/committees/public_bill.cfm, (Accessed 3 November 2009).

alongside the overall attendance levels at each committee sitting. The indicator most frequently cited here however, is the average attendance across the whole committee. This allows attendance levels by committee and by session to be compiled.

ii) *Measuring Specialisation*

The concept of specialisation is one which is widely used when discussing the organisation of legislatures. However, the term is used to describe much more than simply the delegation of tasks to small bodies or committees within a legislature. The analysis of specialisation in legislatures can take a variety of forms. Judge for example distinguishes between three types of specialisation: role specialisation, procedural specialisation and subject specialisation¹¹⁵. It is the last of these forms of specialisation which is to be considered here. Where referred to in this research, specialisation does not therefore refer to the organisation of a legislature in order to improve the efficiency of legislative and executive scrutiny. Nor does it refer to the precise form of representative or scrutiny role being performed by Members.

In their study of specialisation in standing committees, Kimber and Richardson noted that legislative committees in the House of Commons offer 'considerable scope for members to sit on committees considering legislation about which they are knowledgeable'¹¹⁶ In order to assess the presence of any relationship between the specialisation of Members and the viscosity exerted by them or their respective bill committees, it is most useful to view specialisation in terms of the 'specialist knowledge and interest'¹¹⁷ one would expect Members to bring to a committee's proceedings by virtue of their widely available former or current occupations, personal experiences and parliamentary activities. It is thus the implication or perception of an individual committee member's 'personal competence in a subject matter field'¹¹⁸ derived from these activities.

There are two principal ways in which previous studies have measured the extent of specialisation in the House. Firstly, one can measure specialisation in terms of the manner in which it has been acquired. Kimber and Richardson's 1968 study of standing

¹¹⁵ D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p. 6.

¹¹⁶ R Kimber and J J Richardson, 'Specialization and Parliamentary Standing Committees', *Political Studies*, Vol. 16, 1, 1968, p. 7.

¹¹⁷ K C Wheare, *Government by Committee: An Essay on the British Constitution*, Oxford: Clarendon Press, 1955, p. 135.

¹¹⁸ W Buchanan *et al.*, 'The Legislator as Specialist', *Western Political Quarterly*, 3, 3, September 1960, p. 637.

committees in the House made a useful distinction between first and second hand specialisation¹¹⁹. Whilst first hand specialisation referred to knowledge which had been obtained through 'personal tuition,' or 'personal involvement'¹²⁰ in a given policy area, second hand specialisation referred to knowledge which had been acquired 'through dealing with the same set of problems over a long period'¹²¹. This approach allows a distinction between expertise gained by MPs before they entered the House and that which they have accumulated during their time as an MP. Although criticised by some¹²² for being too simplistic, this distinction provided easily accessible measures of specialisation and was designed for the specific purpose of measuring specialisation in bill committees.

Secondly, it is possible to measure specialisation in terms of the activities of a Member of Parliament within the House, during their parliamentary career or in a given parliamentary session. Punnett's 1973 work on the specialisation of the opposition frontbench demonstrated that the questions asked and speeches given by MPs can be analysed to produce an index of specialisation¹²³. This index would demonstrate the extent to which these activities focused on a particular policy area and requires a detailed analysis of the Hansard report of proceedings. This method of measurement was later developed by Judge into a more complex and potentially more accurate measurement, based on the coefficient of variation¹²⁴.

For the purposes of this study it is not necessary to achieve a precise measure of the specialisation of a given Member in terms of their activities in the House. Rather, it is necessary to measure the proportion of members of a bill committee who could be considered to be specialists or non-specialists in the area under examination. Given that the measures considered in bill committee are sometimes very complex, it serves the purposes of this research to apply the broader labels used by Kimber and Richardson.

Whilst the division between first and second hand specialisation is useful here, it cannot be said that one form of specialisation is more significant than another. For instance, an

¹¹⁹ R Kimber and JJ Richardson, 'Specialization and Parliamentary Standing Committees', *Political Studies*, Vol. 16, 1, 1968, pp. 97-101.

¹²⁰ *ibid.*, p. 97.

¹²¹ *ibid.*

¹²² David Judge for example describes this as 'fail[ing] to fully analyse or measure specialisation', *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p. 164.

¹²³ R M Punnett, *Front Bench Opposition: The Role of the Leader of the Opposition, the Shadow Cabinet and Shadow Government in British Politics*, London: Heinemann, 1973, pp. 468-489.

¹²⁴ See D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, pp. 63 – 97.

MP who saw active service in the armed forces many years ago does not necessarily hold greater specialisation than a colleague who has served on the Defence Select Committee over a longer and more recent period of time. Indeed, as Judge's later work demonstrated, MPs consider themselves to acquire knowledge of a policy area in a great many ways, ranging from personal, parliamentary, party and constituency activities¹²⁵. A more exact delineation between the types of specialisation will therefore be sought, incorporating some elements of Judge's work, particularly the areas highlighted in his survey of MPs¹²⁶. It takes a biographical approach rather than one based solely on a Member's activity within the House itself as it is assumed that MPs tabling a high number of questions or making a large number of speeches on a specific issue will do so as a result of one of these aspects of specialisation. Such an approach has been taken before, including by Borthwick in his study of standing committees between 1945 and 1959. At this time he noted that much of the information regarding Members' occupational backgrounds was 'unclear'¹²⁷. However, developments in the channels of communication between MPs and their constituents and the output of parliamentary documents and information compiled by outside groups such as Dod's parliamentary Communications provides a plentiful supply of material regarding these matters.

A division is therefore made between committee members with strong first or second hand specialisation and those with milder forms. This allows a distinction to be made between Members with direct and indirect knowledge of a policy area and between Members who have long standing specialisms and those who have only recently become involved in a subject area. Both of the examples discussed above would be classified as having 'strong' specialisation, the former of the first hand variety and the latter of the second hand form.

¹²⁵ D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, pp. 106-108. See also W Buchanon, 'Subject Matter Experts', in J C Wahlke *et al.* (ed.), *The Legislative System: Explorations in Legislative Behavior*, London: Wiley, 1962, p. 204 for similar examples.

¹²⁶ D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, pp. 106-108, 113.

¹²⁷ R L, Borthwick, *The Standing Committees of the House of Commons: A Study of Membership, Procedure and Working between 1945 and 1959*, *Unpublished PhD Thesis*, University of Nottingham, 1967, p. 125.

Table 2. Measurement of Specialisation

Type of Specialisation	Extent of Specialisation	
	<i>Strong</i>	<i>Mild</i>
<i>First Hand</i>	Previous or current occupation Study or academic training Other direct personal experience Extensive published work	Childhood memories Membership of a body or trade union Other indirect personal experience or that of close family member Related occupation but not completely relevant
<i>Second Hand</i>	Former Government Minister or front bench spokesperson Strong constituency concern Chairman or long standing member of select committee Former chairman or long standing member of a select committee Chairman of party committee or All-Party Parliamentary Group Former Chairman of party committee or All-Party Parliamentary Group	PPS within policy area Newly appointed member of select committee Member of party committee or All- Party Parliamentary Group Former or short term member of a select committee Informed through parliamentary visits Spoke of experience through constituency casework/ particular case Scrutinised previous/similar bill in bill committee

Source: Adapted from D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1982, pp. 106-113.

Table 2 demonstrates a basic outline of what will be considered the stronger and milder forms of specialisation and incorporates the responses received by Judge in his survey of Members of Parliament. The application of these labels however, requires some degree of flexibility. Kimber and Richardson themselves were aware that specialisation ‘is probably not the same from one area of legislation to another’¹²⁸. Thus although *Table 2* shows the final description of the categories used, examples were added to the four types of specialisation as the study progressed.

¹²⁸ R Kimber and J J Richardson, ‘Specialization and Parliamentary Standing Committees’, *Political Studies*, Vol. 16, 1, 1968, p. 101.

As Judge notes “the subject focus of most MPs’ attention appears to change considerably... from one session to another”¹²⁹. Therefore “it is entirely possible for a Member to score as a ‘true specialist’ in both sessions, yet for him to focus upon completely different subjects in each”¹³⁰. To account for this, the specialisation of a Member is considered separately for each bill committee to which they are appointed, on the basis of their expertise at that time. Just as it is possible for a member to have both first and second hand specialisation, it will also be possible for a member to possess elements labelled as both strong and mild. All were recorded and coded separately. However, for the purposes of analysis, those with both strong and mild forms of specialisation in one of the two categories are considered to be strong specialists. In line with the precedent set by previous studies, the focus is predominantly on backbench specialisation. Government and opposition frontbench MPs, whips and parliamentary private secretaries are excluded from the majority of this analysis.¹³¹

Four principal sources were used to assess the form and extent of a Member’s specialisation.

Biography of MP on the Parliament Website (if applicable)

The publicly available biographies of MPs on the UK Parliament¹³² website display detailed accounts of each Member’s current and former frontbench posts, membership of select committees, membership of All-Party Parliamentary Groups (APPGs), party positions and committee memberships and other relevant posts in the House. This website only displays biographical information of sitting MPs. These biographies were saved from the site prior to the 2010 General Election. Although the site does not hold the biographies of former MPs in the House, those who have since been elevated to the peerage also have public biographies¹³³.

¹²⁹ D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p. 186.

¹³⁰ *ibid.*, p. 89.

¹³¹ *ibid.*, p. 65.

¹³² *Alphabetical List of MPs*, http://www.parliament.uk/mpslordsandoffices/mps_and_lords/alms.cfm, (Accessed 26 October 2009).

¹³³ *Alphabetical List of Peers*

http://www.parliament.uk/mpslordsandoffices/mps_and_lords/alphabetical_list_of_members.cfm, (Accessed 26 October 2009).

Biography of MP on their personal website (if applicable)

Biographies of MPs on their own personal websites can add to the data already collected from the UK Parliament website, particularly that concerning former occupations or academic study, other direct personal experiences and strong constituency concerns. At the start of this research 553 out of the 646 sitting MPs had a personal website of some form.¹³⁴ As before, these biographies were saved prior to the 2010 General Election.

Dod's Parliamentary Companion

The annual editions of Dod's Parliamentary Companion provide the most accurate source of biographical information on previous Members of the House, given that the details included in each volume are those offered by Members themselves or by their parliamentary staff. It also offers a more accurate method by which to assess the specialisation of a committee member in a given year. Dod's Parliamentary Companion is usually published during the summer recess for the following year. Thus, the 2001 edition of the volume¹³⁵ was used to assess the specialisation of committee members during the 2000-01 parliamentary session and so forth. Although all previous employment, parliamentary and non-parliamentary roles listed in a Member's profile was used, subject areas listed in the 'special interests' section of a profile has not been included. Whilst it may be relevant to the committee in question, the profile does not give an explanation of why a special interest is listed as such, how it was acquired and provides no indication of its extent.

When analysing the effect of specialisation on the viscosity of committees it is useful to distinguish between specialisation and expertise. The specialisation of Members coded in this study should not be confused with the expertise of Members. Although the two are often used interchangeably¹³⁶ the distinction is an important one. Whilst specialisation implies that an MP would be expected to have some specialist knowledge of a subject area, expertise would imply that the MP has some formal training in a subject area or that he is considered by his colleagues and those outside Parliament as being an authority in the

¹³⁴ *Alphabetical List of MPs*, http://www.parliament.uk/mpslordsandoffices/mps_and_lords/alms.cfm, (Accessed 26 October 2009), Figures correct as of 26 October 2009.

¹³⁵ *Dod's parliamentary Companion*, London: Whittaker, 2000.

¹³⁶ See for example W Buchanan *et al.*, 'The Legislator as Specialist', *Western Political Quarterly*, Vol. 3, 3, September 1960, which did so. In particular, a survey designed to establish the extent of specialisation in Congress asked Members if they considered themselves to be an 'expert' in any particular area of legislation. See also A King, *British Members of Parliament: A Self Portrait*, London: Macmillan Press, 1974, p. 70.

field. For example, an MP appointed to the Health and Social Care Bill Committee (2007-08) who had formally trained as a doctor or nurse would have expertise in the policy area. They would also – by virtue of their former occupation and qualifications - be considered to be a specialist – someone who would be expected to bring knowledge of the area to the committee. However, another member of this committee who had been a party spokesman for Health or a member of the Health Select Committee for many years would be coded as a specialist, but would not necessarily hold any formal expertise in the subject area. Thus, whilst a committee member coded here as a ‘specialist’ by virtue of his previous occupation or parliamentary activities may also have considerable expertise in the policy area being discussed, this is not necessarily the case for all those considered to be specialists.

Examination of contributions made at second reading and during committee proceedings

Some elements of specialisation may only become apparent when referred to by Members themselves. The second reading stages of bills were therefore examined to see if any members of the committee made contributions highlighting some specialisation or previous experience in the policy area. Similarly, any direct or indirect personal experience referred to during the bill committee’s proceedings will also be noted and used to determine the type and extent of specialisation held by a member. Constituency concerns, childhood and family experiences are not likely to be apparent from the published biographies of Members, but may be highlighted during their contributions to parliamentary proceedings.

Although the coding of specialisation here is very detailed, it is by no means all encompassing. It should be noted therefore that the specialisation levels recorded in committees will not be completely accurate. This is partly due to the availability of information. The four sources listed above did not exist for each Member. As would be expected given the availability of public profiles on the Parliament website, greater information was available for MPs sitting in the 2005 Parliament than those of prior Parliaments. Nor was the information available always comprehensive. In particular, data regarding the second hand specialisation of Members within the House of Commons is more extensive for current Members than for those who had left the House. However, combining this range of sources offered the most accurate presentation of the degree of specialisation of committee members. To aid the accuracy of measurement, only dated information published on MPs’ websites was included. In addition to this, the collection of

specialisation data here inevitably focuses on an MP's previous career and parliamentary activity over a period of time. It does not take into account occasions where an MP may have acquired knowledge of a policy area by virtue of attending or following a series of debates in the chamber, committee inquiries or parliamentary questions. This is particularly true for MPs serving many years in the House; they may have (intentionally or unintentionally) acquired specialisation in a policy area, but in such a means that it will not be recorded through the methodology outlined above. Time constraints prevented a more thorough collection of Members' specialisation, but it is important that these limitations are noted.

The degree of specialisation within each committee is expressed as both the percentage of members with first and second hand specialisation and the percentage of strong specialists, mild specialists and non specialists.

iii) Assessing the impact of oral evidence sessions

The introduction of oral evidence sessions as standard committee procedure is an important variable for committee viscosity. Coding committees for oral evidence is a relatively straightforward procedure; committees have either taken oral evidence or they have not. The introduction of written evidence complicates matters somewhat. Whilst not all committees have taken written evidence, all bill committees from 2006 were able to receive written evidence. Some post 2006 committees took written evidence whilst others took both written and oral evidence.

When assessing the impact of evidence sessions on committee viscosity the focus will be on the twenty five committees in the sample that have received oral evidence¹³⁷. The full sample of bills can be divided in two ways for comparative analysis purposes:

1. Analysis of standing committees and public bill committees

The sample can be divided into standing committees (those sitting prior to the 2006 reforms) and public bill committees (those sitting after the 2006 reforms). This enables a simple assessment of whether the two periods of bill committees show any great difference in terms of outputs. Whilst useful as a means of

¹³⁷ All of these 25 committees will also have received written evidence.

assessing committees across the full decade, this division is less useful for an assessment of the evidence taking variable given that a substantial number of public bill committees will have taken no oral evidence.

2. Analysis of oral evidence taking committees and committees taking no oral evidence

A more appropriate means by which to divide the sample of committees for analysis is to compare those committees taking oral evidence with those committees which have not taken oral evidence¹³⁸. This is by far the most useful means of testing the evidence taking variable. It allows all of the indicators of committee output to be presented for these two types of committees.

¹³⁸ The one standing committee taking evidence prior to the 2006 reforms (as a Special Standing Committee) is not included here.

3. Literature Review

Do Committees Make a Difference?

Analysis of the decisional functions of legislatures¹³⁹ remains a core feature of modern legislative studies; detailed analyses of the scrutinising and legitimising functions of legislatures, legislative committees and legislators themselves are plentiful. Although quantitative analysis of legislative output is commonly applied to the study of parliaments in presidential, hybrid or continental systems, this analysis can be simplistic. There remains a deficiency of detailed quantitative analysis of the outputs of the British Parliament, particularly from its legislative committees, with little advancement or updating of the methods employed by Griffith¹⁴⁰. Whilst the procedural reforms made to bill committees in the House of Commons in 2006 gave the scrutiny of bills a slightly higher profile at Westminster, public bill committees themselves have yet to form the basis of any major and comprehensive academic study¹⁴¹.

The Decisional Impact of a Legislature

It has long been established in the literature that it is imperative to focus on the decisional¹⁴² aspects of a legislature and that this requires the analysis of the 'outputs'¹⁴³ of the legislative process. This has been a core component of modern legislative studies throughout the twentieth century, having been described through other terms such as rule-making¹⁴⁴ or 'legislative accomplishment'¹⁴⁵. Indeed, Robert Packenham described the analysis of outputs as 'crucial'¹⁴⁶ to the political development of a legislature. The capacity of legislatures to affect public policy thus underpins the legislative research base.

¹³⁹ R A Packenham, 'Legislatures and Political Development', in A Kornberg and L D Musolf (eds.), *Legislatures in Developmental Perspective*, Durham, Duke University Press, 1970, p.531.

¹⁴⁰ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London, Allen & Unwin, 1974.

¹⁴¹ The only published work focusing specifically on public bill committees to date is that of Jessica Levy, *Strengthening Parliament's Powers of Scrutiny? An assessment of the introduction of public bill committees*, London: Constitution Unit, 2009. See also J Levy, 'Public Bill Committees: An Assessment – Scrutiny Sought; Scrutiny Gained', *Parliamentary Affairs*, 63, 3, 2010, pp. 534-544.

¹⁴² R A Packenham, 'Legislatures and Political Development', in A Kornberg and L D Musolf (eds.), *Legislatures in Developmental Perspective*, Durham: Duke University Press, 1970, p. 531.

¹⁴³ See R A Packenham, 'Legislatures and Political Development', in A Kornberg and L D Musolf (eds.), *Legislatures in Developmental Perspective*, Durham: Duke University Press, 1970, J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, pp. 67-85 and J G Grumm, 'Structural Determinants of Legislative Output', in A Kornberg and L D Musolf (eds.), *Legislatures in Developmental Perspective*, Durham, Duke University Press, 1970, pp. 429 – 459.

¹⁴⁴ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 67.

¹⁴⁵ J D Clinton and J S Lapinski, 'Measuring Legislative Accomplishment 1877 – 1993', *American Journal of Political Science*, 50, 1, January 2006, pp. 232 – 249.

¹⁴⁶ R A Packenham, 'Legislatures and Political Development', in A Kornberg and L D Musolf (eds.), *Legislatures in Developmental Perspective*, Durham, Duke University Press, 1970, p. 547.

As Olson and Mezey suggest, it was not until the latter half of the twentieth century that academics developed 'a more sophisticated sense of what legislatures did and how they affected public policy'¹⁴⁷. This began with the work of Samuel Beer¹⁴⁸ and Robert Packenham¹⁴⁹, both of whom emphasised the core function of legislatures as that of controlling legislation emanating from the executive. The identification of the presence of control in a legislature was not new; one can see references by both Jennings¹⁵⁰ and Finer¹⁵¹ to legislatures having the ability to control the executive. Finer in particular suggested that this control was not 'continuous'. However, the work of Beer and Packenham began to consider the means by which legislatures may influence the executive other than simply through formal amendments and divisions¹⁵². It is the work of Polsby¹⁵³, Mezey¹⁵⁴ and latterly Norton¹⁵⁵ however, which is of particular importance here and continues to guide legislative analysis today. Their eminent typologies developed a more detailed and comparative measure of the capacity of legislatures to constrain the executive branch. Most importantly, the work of Mezey and Norton distinguished between the capacity of a legislature to affect policy measures and the actual exercise of this power¹⁵⁶.

Another measure of legislative capacity developed at this time and which is most useful for this study is that of Jean Blondel and his colleagues at Essex University who devised the concept of legislative viscosity as a measure of the ability of a legislature to constrain the executive branch¹⁵⁷. This study is significant in that it stands as the first comprehensive

¹⁴⁷ D M Olson and M L Mezey, 'Part 1 – Introduction: Parliaments and Public Policy', in D M Olson and M Mezey, (eds.), *Legislatures in the Policy Process: The Dilemmas of Economic Policy Making*, Cambridge, Cambridge University Press, 1991, p.1.

¹⁴⁸ Beer described the role of Parliament as 'to criticize and control', S H Beer, 'The British Legislature: Mobilising Consent', 1966 as reprinted in P Norton (ed.) *Legislatures*, Oxford, OUP, 1990, p. 71.

¹⁴⁹ R A Packenham, 'Legislatures and Political Development', in A Kornberg and L D Musolf (eds), *Legislatures in Developmental Perspective*, Durham, Duke University Press, 1970.

¹⁵⁰ W I Jennings, *Parliament, Reprinted Edn*, Cambridge, Cambridge University Press, 1948, pgs. 7, 8 and 12.

¹⁵¹ H Finer, *Theory and Practice of Modern Government, Revised Edn*, London, Methuen & Co Ltd, 1950, p. 529.

¹⁵² See S Beer, 'The British Legislature and the Problem of Mobilising Consent', 1966, as reproduced in P Norton (ed.), *Legislatures*, Oxford: OUP, 1990, pp. 71-72 and R A Packenham, 'Legislatures and Political Development', in A Kornberg and L D Musolf (eds.), *Legislatures in Developmental Perspective*, Durham, Duke University Press, 1970, p. 522.

¹⁵³ N Polsby, 'Legislatures', 1975, in P Norton (ed.), *Legislatures*, Oxford, OUP, 1990, pp. 129 – 148.

¹⁵⁴ M Mezey, *Comparative Legislatures*, Durham, Duke University Press, 1979.

¹⁵⁵ P Norton, 'Parliament and Policy in Britain: The House of Commons as a Policy Influencer', in P Norton (ed.), *Legislatures*, Oxford, OUP, 1990, pp. 177 – 180.

¹⁵⁶ M Mezey, *Comparative Legislatures*, Durham, Duke University Press, 1979, p. 25 and P Norton 'Parliament and Policy in Britain: The House of Commons as a Policy Influencer', in P Norton (ed.), *Legislatures*, Oxford: OUP, 1990, pp. 177 – 180. This concept is discussed in more detail in P Cairney, 'The Analysis of Scottish Parliament Committee Influence: Beyond capacity in comparing West European legislatures', *European Journal of Political Research*, 45, 2, 2006, p. 204.

¹⁵⁷ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970.

attempt to quantify the level of control exerted by a legislature and to offer a basic comparative assessment of this power against other legislatures. The data collected by Blondel, including the frequency of successful bills and amendments, the time allocated by parliaments for legislative scrutiny and the number of successful Private Members' Bills, enabled five legislatures¹⁵⁸ to be placed along a continuum of legislative viscosity, ranging from those that were 'free' to those which were 'compliant'¹⁵⁹. Although the methodology was innovative and conceptually extremely useful, the quantitative results were small, capturing only a limited period of legislative activity¹⁶⁰. As such, it demonstrated only a small snapshot of each of the five legislatures at the given time.

Additionally, the work of Blondel *et al.* identified a further element of constraint operating in legislatures. Described as a 'milder influence'¹⁶¹, this constraint included the introduction of amendments by the Government during the report stage of a bill, which had previously been pressed but withdrawn during the committee stage. Such influence had been touched upon in previous studies; Jennings for example had noted that a survey of the British Parliament would necessitate a study of 'the labour that goes on behind the scenes'¹⁶², but Blondel *et al.* can perhaps be credited with making the presence of these other forms of influence and their potential impact on legislative analysis more explicit. Although the identification of this less tangible form of legislative output was crucial, particularly for the analysis of legislative committees, Blondel was unable to place a value upon these influences.

Placing a value on legislative output

Although the work of Blondel and his colleagues brought a new understanding of the control function of a legislature, they themselves acknowledged the flaws in their methodological approach. In particular the difficulties in classifying amendments tabled in committees continued to make the impact of committee stage 'difficult to measure'¹⁶³. They conceded that no consensus existed as to the most accurate method by which to

¹⁵⁸ UK, Ireland, Sweden, France and India.

¹⁵⁹ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 80.

¹⁶⁰ Data are drawn from only one parliamentary session in each legislature.

¹⁶¹ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 79.

¹⁶² W I Jennings, *Parliament, Reprinted Edn*, Cambridge: Cambridge University Press, 1948, p. 492.

¹⁶³ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p.78.

measure the impact of legislatures with any certain accuracy; in many respects it remained subjective, with a heavy reliance on qualitative judgements¹⁶⁴.

Perhaps because of this need for qualitative judgements, few scholars have since concentrated on the viscosity of legislatures in as much detail as Blondel, with most preferring to utilise the typologies developed by Mezey or Norton when assessing the legislative power of parliaments¹⁶⁵. With the exception of Norton's detailed consideration of the variables affecting the viscosity of a legislature¹⁶⁶, there are only sporadic references to viscosity in the British House of Commons and in other European legislatures¹⁶⁷. No study has since utilised or sought to develop Blondel's index of viscosity, either to quantify the output of the House of Commons or of its committees and few have done so through other means. Those with the intention of measuring legislative output have often fallen somewhat short. Mattson and Strøm for example stated their interest in 'the ability of the committees [in Western Europe] to influence or determine parliamentary outputs'¹⁶⁸, but concentrated on procedural inputs, including the right to initiate legislation, to rewrite bills or to obtain information¹⁶⁹. Although worthy of attention, the emphasis in the study is placed more strongly on capacity, rather than any truly measurable power of committees to determine legislative output. Similarly, in their edited volume *Committees in Legislatures: A Comparative Analysis*, Lees and Shaw conclude by ranking the eight legislatures documented in the study in order of the relative importance of their committee systems. They define this as 'the ability of the official committees in the legislature to influence or determine the outputs of the legislature and the polity'¹⁷⁰. Those legislatures placed in the higher rank order¹⁷¹ are described as possessing a greater tendency to 'put their imprint on the substantive outputs of government'¹⁷². However, one

¹⁶⁴ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 197, p. 71.

¹⁶⁵ More recently see for example, S Macgregor, 'Legislature Impact on Executive Legislation', *Paper presented at PSA Annual Conference 2010*, accessed online at http://www.psa.ac.uk/2010/UploadedPaperPDFs/549_716.pdf (27 April 2010).

¹⁶⁶ P Norton, 'The Legislative Powers of Parliament', in Flinterman, A. Heringa, A W and Waddington, L (eds.), *The Evolving Role of Parliaments in Europe*, Antwerp, Maklu, 1994, pp. 15 – 32.

¹⁶⁷ Capano and Guiliani for instance, briefly refer to the 'institutional viscosity' of the Italian Parliament in their diachronic analysis of its legislative outputs. See G Capano and M Guiliani, 'Governing Without Surviving? An Italian Paradox: Law Making in Italy, 1987 – 2001', *Journal of Legislative Studies*, 7, 4, Winter 2001, pgs 29 and 32.

¹⁶⁸ I Mattson and K Strøm, 'Parliamentary Committees', in H Döring (ed.), *Parliaments and Majority Rule in Western Europe*, New York, St Martin's Press, 1995, p. 285.

¹⁶⁹ *ibid.*, p. 285 – 295.

¹⁷⁰ M Shaw, 'Conclusion', in J D Lees and M Shaw (eds.), *Committees in Legislatures: A Comparative Analysis*, Oxford, Duke University Press, 1979, p. 384.

¹⁷¹ The US Congress was placed in first position, followed by the Italian and West German parliaments. The British House of Commons was ranked in sixth position.

¹⁷² M Shaw, 'Conclusion', in J D Lees and M Shaw (eds.), *Committees in Legislatures: A Comparative Analysis*, Oxford, Duke University Press, 1979, p. 385.

would struggle to find any solid empirical evidence of these substantive outputs; the authors themselves even admit that the rankings are 'imprecise,' and 'crude'¹⁷³.

The reluctance of British researchers to adapt Blondel's index of viscosity or to concentrate on the visible outputs of the legislative process is perhaps fuelled by the earlier methodological assumptions made by Nelson Polsby. When explaining his delineation between arena and transformative legislatures, he described the student of arena legislatures such as the British House of Commons as 'the student of social backgrounds of legislators, of legislative recruitment, of 'pressure' groups, of extra-parliamentary party politics, of the organization of parliamentary parties, and of debate'¹⁷⁴. Conversely, it was the student of transformative legislatures who Polsby believed would focus on 'internal structure', 'committee structure' and 'the operations of rules of internal procedure'¹⁷⁵. It is no surprise then that literature on internal structures and processes of the House of Commons has not developed at the same pace as that considering external variables. In some respects therefore, this study is an attempt to utilise forms of analysis more common to the so called transformative legislature, than to the archetypal arena legislature.

Empirical Studies of Legislative Committees in the UK

Alongside the notion that examinations of legislative output are crucial when forming an assessment of the policy effect of a legislature, there is an equally strong consensus among scholars that committees play a pivotal role within this. Arter for instance states that 'for legislatures to work, their committees have to work'¹⁷⁶, whilst Whitmore describes strong committees as 'an essential precondition for parliamentary influence in policy-making'¹⁷⁷. Reformist literature also concentrates heavily on committees; a sign that they are an integral element of the quality of the legislative process and the supposed power of a legislature, particularly of its backbench members. Jewell for instance, writes that 'when [US] Congressmen have grown concerned about the growth of presidential power, they

¹⁷³ M Shaw, 'Conclusion', in J D Lees and M Shaw (eds.), *Committees in Legislatures: A Comparative Analysis*, Oxford, Duke University Press, 1979, p. 385.

¹⁷⁴ N W Polsby, 'Legislatures', in P Norton (ed.), *Legislatures*, Oxford, OUP, 1990, p. 141.

¹⁷⁵ *ibid.*

¹⁷⁶ D, Arter, 'Committee cohesion and the 'corporate dimension' of parliamentary committees: A comparative analysis', *Journal of Legislative Studies*, 9, 4, Winter 2003, p. 73.

¹⁷⁷ S Whitmore, Challenges and constraints for post Soviet committees: Exploring the impact of parties on committees in the Ukraine, *Journal of Legislative Studies*, 12, 1, March 2006, p.32.

have generally sought ways to strengthen the committee system¹⁷⁸. More recently, the report of the House of Commons Reform Committee proposed a series of changes to the select committee system¹⁷⁹ as part of its recommendations to rebalance the relationship of the House of Commons with the executive.

One would therefore expect a plethora of work on the effect of standing committees in the House of Commons. Indeed, Strøm has suggested that they have received ‘the most intensive and painstaking scholarly attention’¹⁸⁰ of any internal features of a legislature. Whilst the purpose and procedural aspects of bill committee stage are often covered in detail in practical textbooks on the British Parliament¹⁸¹, only a handful of works could be considered to have taken what Patterson would describe as a ‘committee-centred’¹⁸² approach¹⁸³, concentrating solely on legislative committees. The most obvious such work is that of Lees and Shaw, whose edited volume *Committees in Legislatures*¹⁸⁴ included a significant contribution from Walkland on committees in the House of Commons¹⁸⁵. A recent review of literature on the policy impact of the British Parliament went so far as to state that many authors ‘treat the UK as if it lacked legislative committees altogether’¹⁸⁶. David Wood’s analysis of industrial policy in the House of Commons is perhaps one such work¹⁸⁷. Testing the hypothesis that Parliament was not central to industrial policy making, Wood examined the record of voting in divisions in the House of Commons and the record of interventions by MPs in debates and parliamentary questions, supplemented with interview data. His analysis is divided into various sections including ‘policy deliberation and decision’¹⁸⁸. At no point does he make reference to the committee stage of

¹⁷⁸ M E Jewell, ‘Foreword’, in J D Lees and M Shaw (eds.), *Committees in Legislatures: A Comparative Analysis*, Oxford, Duke University Press, 1979, p. vii.

¹⁷⁹ ‘Rebuilding the House’, *House of Commons Reform Committee, First Report of Session 2008-09*, HC 1117, pp. 15 – 30.

¹⁸⁰ K Strøm, ‘Parliamentary Government and Legislative Organisation’, in H Döring (ed.), *Parliaments and Majority Rule in Western Europe*, New York, St Martin’s Press, 1995, p. 65.

¹⁸¹ For example R Rogers and R Walters, *How Parliament Works*, 6th Edn., Harlow, Pearson Longman, 2006.

¹⁸² S C Patterson, ‘Understanding the British Parliament’, *Political Studies*, 37, 1989, p. 459.

¹⁸³ See for example R Kimber and J J Richardson, ‘Specialization and Parliamentary Standing Committees’, *Political Studies*, 16, 1, 1968, pp.97-101 and R L Borthwick, *The Standing Committees of the House of Commons: A Study of Membership, Procedure and Working between 1945 and 1959*, *Unpublished PhD Thesis*, University of Nottingham, 1967.

¹⁸⁴ J D Lees and M Shaw (eds.), *Committees in Legislatures: A Comparative Analysis*, Oxford, Duke University Press, 1979.

¹⁸⁵ S A Walkland, ‘Committees in the British House of Commons’, in M Shaw (ed.) *Committees in Legislatures*, Oxford, Duke University Press, 1979, pp. 242 – 287.

¹⁸⁶ M Russell and M Benton, ‘Assessing the Policy Impact of Parliament: Methodological Challenges and Possible Future Approaches’, *Paper for PSA Legislative Studies Specialist Group Conference*, 24 June 2009, UCL, p. 8

¹⁸⁷ D M Wood, ‘The British House of Commons and Industrial Policy’, in D Olsen and M Mezey (eds.), *Legislatures in the Policy Process: The Dilemmas of Economic Policy Making*, Cambridge, Cambridge University Press, 1999, pp. 103 – 129.

¹⁸⁸ *ibid.*, pp. 114 – 119.

any of the selected bills¹⁸⁹. The lack of attention given to legislative committees is not confined to the British Parliament. In his contribution to Reuven Hazan's edited volume examining cohesion and discipline in legislatures, Arter went so far as to describe his contribution on committee cohesion as one which will 'stick out like a sore thumb'¹⁹⁰.

There are perhaps three main causes of such an extensive gap in the literature concerning legislative committees in the House of Commons. Firstly, the notion that bill committees are merely replicas of the chamber itself. Descriptions of standing committees as 'miniature parliaments'¹⁹¹, 'an extension of the House'¹⁹² or as 'microcosms of the larger legislature'¹⁹³ have pervaded much of the literature and arguably hindered the study of standing committees since their creation. To quote Redlich in his seminal work on the British Parliament, bill committees are considered to be simply a 'technical auxiliary'¹⁹⁴. Such assumptions negate the need for detailed analysis. Added to this is the common assertion that bill committee proceedings themselves are mundane, repetitive and sterile, offering little useful material to researchers. Joseph LaPalombara notes that compared to other areas of legislative analysis 'an examination of legislative committees seems dull and unappealing'¹⁹⁵. In the UK context Young for example, described standing committees as 'fairly routine and standardized'¹⁹⁶, although he conceded that this practice does 'occasionally'¹⁹⁷ vary, whilst Walkland described proceedings as 'ritualized'¹⁹⁸ and Taylor notes that committee proceedings are not 'usually very interesting for the visitor'¹⁹⁹. In some respects the contemporary attitude to bill committees is reminiscent of Beer's

¹⁸⁹ D M Wood, 'The British House of Commons and Industrial Policy', in D Olsen and M Mezey (eds.), *Legislatures in the Policy Process: The Dilemmas of Economic Policy Making*, Cambridge, Cambridge University Press, 1999, pp. 103 – 129.

¹⁹⁰ D Arter 'Committee Cohesion and the 'Corporate Dimension' of Parliamentary Committees: A Comparative Analysis', in Hazan, R Y (ed.), *Cohesion and Discipline in Legislatures: Political Parties, Parliamentary Committees and Governance*, London, Routledge, 2006, p. 73.

¹⁹¹ Jennings, 1948, p. 270. House of Commons Information Sheets to Members also describe committees as being like the chamber in 'miniature', 'Public Bill Committees', *House of Commons Information Sheet*, London: House of Commons, May 2010.

¹⁹² R Young, *The British Parliament*, London, Faber and Faber, 1962, p. 156. See also p. 157.

¹⁹³ K Strøm, 'Parliamentary Government and Legislative Organization', in H Döring (ed.), *Parliaments and Majority Rule in Western Europe*, Frankfurt: Campus Verlag, 1995, p. 65. See also C J Hughes, 'The Early History of Standing Committees: 1832 – 1905', *Parliamentary Affairs*, 1, 4, 1947, p. 378 and J G S Shearer, 'Standing Committees in the House of Commons 1945 – 50', *Parliamentary Affairs*, 3, 4, 1949, p. 562.

¹⁹⁴ J Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form, Vol. II*, London, Archibald Constable & Co Ltd, 1908, p. 205. See also R L, Borthwick, *The Standing Committees of the House of Commons: A Study of Membership, Procedure and Working between 1945 and 1959*, *Unpublished PhD Thesis*, University of Nottingham, 1967, pp. 194 and 199, E Taylor, *The House of Commons at Work*, Middlesex: Penguin, 1951, p.164, and H Eulau, 'The Roles of Legislators in the Legislative Process', in J C Wahlke *et al.* (ed.), *The Legislative System: Explorations in Legislative Behavior*, London: Wiley, 1962, p. 238.

¹⁹⁵ J LaPalombara, *Politics Within Nations*, New Jersey: Prentice Hall, 1974, p. 123.

¹⁹⁶ R Young, *The British Parliament*, London: Faber and Faber, 1962, p. 158.

¹⁹⁷ *ibid.*

¹⁹⁸ S A Walkland, 'Committees in the British House of Commons', in J D Lees and M Shaw (eds.), *Committees in Legislatures*, Oxford: Duke University Press, 1979, p.261.

¹⁹⁹ E Taylor, *The House of Commons at Work*, Middlesex: Penguin, 1951, p. 138.

dismissal of the study of divisions in the House of Commons as something that is so 'monotonously 100 per cent or nearly 100 per cent it is hardly worth making the count'²⁰⁰. Yet without the work of academics such as Norton and Cowley in collecting this data, the changes in parliamentary behaviour from the 1970s would not have been apparent²⁰¹. The perceived lack of useful data in standing committee proceedings should not therefore render them unworthy of attention.

Secondly, bill committees have been overshadowed since 1979 by the arguably more powerful select committees. Whilst a book devoted solely to standing committees is non-existent, one can point to a number of works on select committees without difficulty²⁰². Even those texts which cover both investigative and legislative committees have paid greater attention to the former. For instance, in his contribution to Malcolm Shaw's edited volume on committees, Stuart Walkland devotes twice as much attention to select committees as to standing committees²⁰³. In the context of the policy impact of committees in the British House of Commons, one could point to a recent study by Russell and Benton examining the work of select committees on legislation²⁰⁴. The study traced select committee recommendations, illustrating their transference into legislative acts. Whilst the second element of this study focuses somewhat on bill committees, this is within the context of the influence of parliament as a whole upon a series of case study bills²⁰⁵.

Thirdly and perhaps most important in recent years is the development of techniques by scholars analysing committees in other legislatures which cannot be replicated in studies of the House of Commons. Mattson and Strøm refer to the British House of Commons as 'the most deviant case'²⁰⁶; this is particularly true for bill committees. Many studies of legislative committee systems are based on legislatures within presidential or hybrid

²⁰⁰ S Beer, 'The British Legislature and the Problem of Mobilising Consent', in E Frank (ed.), *Lawmakers in a Changing World*, Englewood Cliffs NJ, Prentice Hall, 1966, p. 33.

²⁰¹ See for example P Cowley, *The Rebels: How Blair misled his majority*, London, Politicos, 2005, p. 4. This has also been suggested by D Melhuish and P Cowley, 'Whither the new role in policy making? Conservative MPs in standing committees, 1979 to 1992', *Journal of Legislative Studies*, 1, 4, 1995, pp. 54 – 75.

²⁰² For example, G Drewry, *The New Select Committees: A Study of the 1979 Reforms*, Oxford: Clarendon Press, 1979, M Jogerst, *Reform in the House of Commons: The Select Committee System*, Kentucky, University Press of Kentucky, 1993 and D Hawes, *Power on the Back Benches? The growth of select committee influence*, Bristol, SAUS Publications, 1993.

²⁰³ S A Walkland, 'Committees in the British House of Commons', in J D Lees and M Shaw (eds.), *Committees in Legislatures*, Oxford: Duke University Press, 1979, p. 242 – 287.

²⁰⁴ M Russell and M Benton, *Selective Influence: The Policy Impact of House of Commons Select Committees*, London: Constitution Unit, June 2011.

²⁰⁵ Ten case study bills are to be examined in this study, which is due to conclude in April 2013. <http://www.ucl.ac.uk/constitution-unit/research/parliament/legislation> (accessed 1 October 2011).

²⁰⁶ I Mattson and K Strøm, 'Parliamentary Committees', in H Döring (ed.), *Parliaments and Majority Rule in Western Europe*, Frankfurt: Campus Verlag, 1995, p.260.

systems, where bill committees frequently have additional powers of legislative initiation and often the ability to choose not to report a bill back to the floor of the House. As such, the methods used are often inaccessible to the study of committees in Westminster model parliaments. This is most commonly seen in studies of committees in the US Congress but is also observable elsewhere. Pereira and Mueller's examination of committees in the Brazilian Chamber of Deputies for instance concentrates on the powers of bill committees versus those of the executive and of the percentage of bills which are reported back to the floor²⁰⁷, whilst David Arter writes of three West European parliaments whose committees have the right of legislative initiative²⁰⁸. This hinders researchers seeking to apply tested methodologies to the British Parliament and facilitates its absence from comparative committee studies.

Traditionally, those works which have made more than a passing reference to bill committees in the House of Commons have fallen into two categories; historical accounts of standing committee reform and procedure or qualitative analysis of specific committees, often in an anecdotal format. In the former category one could include the work of Stuart Walkland²⁰⁹, Ivor Jennings²¹⁰, Edward Porritt²¹¹ and Joseph Redlich²¹², all of whom document the historical and procedural reform of standing committees over the course of the late nineteenth and early twentieth century²¹³. These broad studies of the parliamentary process devote considerable attention to the history of standing committees in the House, particularly the incremental changes made to their size and use²¹⁴. Given the lack of consensus over the use and structure of standing committees in the early half of the twentieth century, the lack of empirical analysis in their work is not surprising. Indeed, Redlich was writing at a time when only 'two large standing

²⁰⁷ C Pereira and B Mueller, 'A theory of executive dominance of congressional politics: the committee system in the Brazilian chamber of deputies', *Journal of Legislative Studies*, 10, 1, Spring 2004, pp. 9 – 49.

²⁰⁸ D Arter 'Committee Cohesion and the 'Corporate Dimension' of Parliamentary Committees: A Comparative Analysis', in Hazan, R Y (ed.), *Cohesion and Discipline in Legislatures: Political Parties, Parliamentary Committees and Governance*, London: Routledge, 2006, p. 73-4.

²⁰⁹ S A Walkland, 'Committees in the British House of Commons', in J D Lees and M Shaw (eds.), *Committees in Legislatures*, Oxford: Duke University Press, 1979.

²¹⁰ W I Jennings, *Parliament, Reprinted Edn.*, Cambridge: Cambridge University Press, 1948, pp. 232 – 242, 264 – 279.

²¹¹ E Porritt, 'Chapter XXVII: The Procedure of the House' in *The Unreformed House of Commons: Parliamentary Representation Before 1832, Vol. 1*, Cambridge, Cambridge University Press, 1909, pp. 528 – 544.

²¹² J Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form, Vol. II*, London: Archibald Constable & Co Ltd, 1908, pp. 203 – 214.

²¹³ See also R L Borthwick, 'The Standing Committees of the House of Commons: A Study of Membership, Procedure and Working between 1945 and 1959', *Unpublished PhD Thesis*, University of Nottingham, 1967, pp. 3 – 101.

²¹⁴ H Finer, *Theory and Practice of Modern Government, Revised Edn.*, London: Methuen & Co Ltd, 1950, p. 483. pp. 489 – 493.

committees'²¹⁵ were appointed each session. Only from the mid twentieth century did more detailed committee studies begin to appear, perhaps because of procedural reforms in 1946²¹⁶ which enhanced the status of standing committees, allowing them to meet when the House was in session²¹⁷. More recently academics have again concentrated on proposals for standing committee reform, usually within the context of wider House of Commons reform²¹⁸.

The work of Jennings and Walkland could also be included in the latter category, alongside that of Finer²¹⁹, whose anecdotal analyses contributed enormously to our knowledge of committees in the House. These qualitative studies however, have often been less than comprehensive. Jennings for example, claims to have taken 'one of the volumes of parliamentary debates for 1936 and glanced through it,' adding that he 'might have chosen any other volume and arrived at the same result'²²⁰. This lack of comprehensive committee analysis has continued throughout the twentieth century, Mattson and Strøm claiming as late as 1995 that legislative specialists often drew conclusions after 'brief comparisons, with little specificity'²²¹. More recently the work of Jessica Levy²²² on the new public bill committees falls somewhat into this category. This first substantial analysis of the impact of the change to public bill committees took a largely qualitative format, based on interviews with committee members and clerks.

This is not to suggest that there is no value in qualitative committee analysis. Writing in 1967, R L Borthwick noted that academics had 'little to say about the actual nature of the discussion which takes place'²²³ in committees. Samuel Patterson, writing in 1989 continued to press for 'more descriptive'²²⁴ studies of Parliament, whilst Walkland himself

²¹⁵ J Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form, Vol. II*, London: Archibald Constable & Co Ltd, 1908, p. 181.

²¹⁶ 1st Report, Procedure Committee 1945.

²¹⁷ In his revised edition of the *Theory and Practice of Modern Government*, published in 1950, Finer for instance speaks of the 'increasing importance'²¹⁷ of bill committees. See H Finer, *Theory and Practice of Modern Government, Revised Edn.*, London: Methuen & Co Ltd, 1950, p. 483.

²¹⁸ See for example P Norton, *Does Parliament Matter?*, Hemel Hempstead, Harvester Wheatsheaf, 1993, pp. 83 – 87.

²¹⁹ H Finer, *Theory and Practice of Modern Government, Revised Edn.*, London: Methuen & Co Ltd, 1950, pp. 369 – 574.

²²⁰ W I Jennings, *Parliament, Reprinted Edn.*, Cambridge: Cambridge University Press, 1948, p.22.

²²¹ I Mattson and K Strøm, 'Parliamentary Committees', in H Döring (ed.), *Parliaments and Majority Rule in Western Europe*, Frankfurt: Campus Verlag, 1995, p. 295

²²² J Levy, *Strengthening Parliament's Powers of Scrutiny? An assessment of the introduction of public bill committees*, London: Constitution Unit, 2009.

²²³ R L Borthwick, 'The Standing Committees of the House of Commons: A Study of Membership, Procedure and Working between 1945 and 1959, *Unpublished PhD Thesis*, University of Nottingham, 1967, p. 194.

²²⁴ S C Patterson, 'Understanding the British Parliament', *Political Studies*, 37, 3, 1989, p. 449.

believed that there had been 'insufficient content analysis'²²⁵ of bill committee proceedings. More recently, Arter has also made the case for greater qualitative analysis 'to understand what really goes on in committees'²²⁶. It is notable that whilst academics have often coded the text of bills and of debates or questions on the floor of the House, the systematic coding of bill committee sessions remains as yet untried. Clearly, there is room for the qualitative analysis of legislative committees to develop further.

None of the works cited here offer much in the form of substantive empirical evidence. Where such evidence is used, it is often limited to one session only, or includes only a modest breakdown of the number of bills introduced and passed in each session²²⁷. Although the recent study by Levy raised important concerns about the new bill committees in the Commons, particularly regarding the scheduling of oral evidence sessions, statistical analysis is limited to the number of bills committed to the new committees and the corresponding number of witnesses and written submissions²²⁸. A quantitative assessment of the work and output of the new public bill committees would add substantially to that which we already know about the new committees.

Detailed quantitative analysis of the legislative process in the UK has tended to encompass all of the parliamentary stages of a bill, or upon the most vivid and newsworthy outputs: the divisions in the House of Commons. In the former category one can include previous analyses of specific bills, such as Russell and Johns' study of the passage of the Identity Cards Bill as well as the ongoing policy impact project being undertaken by the Constitution Unit. In this latter category one can include the work of Philip Norton²²⁹ and more recently of Philip Cowley²³⁰. Their work focuses on the operation of the House of Commons chamber itself; although legislative committees feature they do so less prominently. A paper by both authors²³¹ in the mid 1990s considered the voting behaviour

²²⁵ S A Walkland, 'Committees in the British House of Commons', in J D Lees and M Shaw (eds.), *Committees in Legislatures*, Oxford: Duke University Press, 1979, p. 260.

²²⁶ D, Arter, 'Committee cohesion and the 'corporate dimension' of parliamentary committees: A comparative analysis', *Journal of Legislative Studies*, 9, 4, Winter 2003, p. 86.

²²⁷ W I Jennings, *Parliament, Reprinted Edn.*, Cambridge: Cambridge University Press, 1948, pp. 233 and 524-527.

²²⁸ J Levy, *Strengthening Parliament's Powers of Scrutiny? An assessment of the introduction of public bill committees*, London: Constitution Unit, 2009, pp. 25 – 26.

²²⁹ P Norton, *Dissension in the House of Commons: intra party dissent in the House of Commons division lobbies, 1945 – 74*, London, Macmillan, 1975. Also P Norton, *Dissension in the House of Commons, 1974 – 79*, Oxford, Clarendon Press, 1980.

²³⁰ P Cowley, *Revolts and Rebellions: Parliamentary Voting under Blair*, London, Politico's, 2002. Also P Cowley, *The Rebels: How Blair mislaid his majority*, London: Politico's, 2005.

²³¹ P Cowley and P Norton, *Are Conservative MPs Revolting? Dissension by Government MPs in the British House of Commons 1976 – 96*, Research Papers in Legislative Studies, 2/96, Hull, Centre for Legislative Studies, 1996, pp. 28 – 32 and 34 – 36.

of Conservative members of standing committees in the House, arguing that such studies were 'as important as [analysing] the behaviour of MPs in plenary session'²³². Their analysis illustrated that dissent in committee was becoming 'increasingly isolated and disparate'²³³, with government defeats in committee divisions not exceeding 1.6 per cent throughout 1979 to 1992²³⁴. Earlier work by Norton lists dissenting votes cast in the committee stage of 70 bills during standing committee examination between 1945-74²³⁵. This work highlights several government defeats during standing committees²³⁶, including a series of 'embarrassing defeats'²³⁷ during the 1972-73 parliamentary session²³⁸ and is corroborated by Schwarz's study of government defeats in standing committee in the 1970s²³⁹. Whilst dissent expressed in committee prompted the government's acceptance of some amendments²⁴⁰, Norton found that others were reversed at report stage²⁴¹. Other authors have also touched upon voting behaviour in standing committees²⁴², though often only with very general descriptions. A complete breakdown of the divisions and amendments made in standing committees over a significant length of time has not yet been publically recorded²⁴³.

The most noticeable methodological gap in the literature surrounding legislative committees is thus the lack of quantitative empirical research focusing on the output of bill committees as a *distinct feature* of the legislative process. Heinz and McCluggage refer to such 'quantitative-statistical' work as forming the 'third generation' of committee studies²⁴⁴. Whilst studies of voting behaviour in bill committees can be found with relative

²³² P Cowley and P Norton, *Are Conservative MPs Revolting? Dissension by Government MPs in the British House of Commons 1976 – 96*, Research Papers in Legislative Studies, 2/96, Hull, Centre for Legislative Studies, 1996, p. 28.

²³³ *ibid.*, p. 32.

²³⁴ P Cowley and P Norton, *Are Conservative MPs Revolting? Dissension by Government MPs in the British House of Commons 1976 – 96*, Research Papers in Legislative Studies, 2/96, Hull, Centre for Legislative Studies, 1996, p. 35. See also D Melhuish and P Cowley, 'Whither the new role in policy making? Conservative MPs in standing committees, 1979 to 1992', *Journal of Legislative Studies*, 1, 4, 1995, pp. 54 – 75.

²³⁵ P Norton, *Dissension in the House of Commons: Intra-Party Dissent in the House of Commons Division Lobbies 1945-74*, London, Macmillan Press, 1975, pp. 7-571.

²³⁶ P Norton, *Conservative Dissidents: Dissent within the Parliamentary Conservative Party 1970-74*, London: Temple Smith, 1978. See for example pgs. 104, 111, 112, 142 – 3, 159.

²³⁷ *ibid.*, p. 142.

²³⁸ See also P Norton, 'Dissent in Committee: Intra-Party Dissent in Commons' Standing Committees 1959-74, *The Parliamentarian*, 57, 1, 1976, pp. 15 – 25.

²³⁹ J E Schwarz, 'Exploring a New Role in Policy Making: The British House of Commons in the 1970s', *American Political Science Review*, 74, 1, 1980, pp. 23-37.

²⁴⁰ *ibid.*, See for example pp. 142-143.

²⁴¹ *ibid.* See for example pp. 112, 122-3, 143, 144.

²⁴² See A Potter, *Organised Groups in British National Politics*, London, Faber and Faber, 1961, p. 292.

²⁴³ Norton's 1976 and 1978 work focuses on dissent by members of the Conservative Party. It does not include a published breakdown of all amendments tabled in standing committees.

²⁴⁴ E Heinz and V McCluggage, 'Standing Committees in Legislatures: Three Decades of Research', *Legislative Studies Quarterly*, 9, 2, May 1984, p. 204.

ease²⁴⁵, empirical analyses of variables other than that of party are rare. Extensive empirical research on the work of bill committees in the House of Commons is limited to only two studies; that of Griffith, who examined in detail the passage of all government bills across three parliamentary sessions between 1967 and 1971²⁴⁶ and that of Burton and Drewry, who offered a similar though less comprehensive study of selected government bills between 1970 and 1974²⁴⁷. Even the changes made to bill committees in 2006 have not prompted further quantitative study. The Revolts website noted in 2008 that it was 'not aware of any systematic research on how the procedure has been utilised'²⁴⁸.

The work of Griffith and of Burton and Drewry are pivotal, offering a rich quantity of data and developing our understanding of both the legislative process and the effects of standing committees themselves. Griffith's study marked the first systematic study and coding of such a large number of legislative amendments, with the aim of illustrating both the 'quality as well as the quantity of the impact'²⁴⁹ of Parliament. Although his work did not consider bill committees in isolation, the analysis of committee stage in the House of Commons is by far the most comprehensive element and accounts for over one-third of the published work²⁵⁰. Whilst the methodology employed is relatively simple, the findings are illuminating. When distinguishing between the different types of amendments for example, Griffith used a simple delineation between those which were more or less, substantive. Although basic, this methodology was easily applied, producing results which were easily comparable. It was thus possible to demonstrate the number of amendments tabled in standing committee for each of the three parliamentary sessions²⁵¹ and the proportion which were withdrawn, negated or agreed to in committee²⁵². The data produced by Burton and Drewry's study of legislation is equally rich, although the authors place a stronger focus upon the type of bill under discussion (policy or administrative²⁵³) than upon the committees themselves. Their methodology was similarly straightforward, maximising the collection of comparative material, such as the number of sittings in

²⁴⁵See for example D Melhuish and P Cowley, 'Whither the new role in policy making? Conservative MPs in standing committees, 1979 to 1992', *Journal of Legislative Studies*, 1, 4, 1995, pp. 54 – 75.

²⁴⁶J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974.

²⁴⁷I Burton and G Drewry, *Legislation and Public Policy: Public Bills in the 1970 – 74 Parliament*, London, Macmillan Press, 1981.

²⁴⁸'Better than nowt, but still a missed opportunity', *Revolts*, 9 November 2008, accessed online at http://www.revolts.co.uk/cat_news.html

²⁴⁹J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 14.

²⁵⁰*ibid.*, pp. 31 – 144.

²⁵¹J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 75.

²⁵²*ibid.*, p. 93.

²⁵³I Burton and G Drewry, *Legislation and Public Policy: Public Bills in the 1970 – 74 Parliament*, London, Macmillan Press, 1981, pp. 36 – 37.

standing committee by each type of bill²⁵⁴. Both these works are immensely valuable for the vast empirical data and descriptive case studies of bills and their various amendments. However, at no point is an assessment of the work of committees offered; the reader is left to make up their own mind as to whether one committee was more effective than another, or whether one session saw greater committee output in terms of the content and quality of amendments than another.

Griffith's work remains the most comprehensive analysis to date, although there have been isolated attempts to replicate a similar level of detail in analysing the success of legislative amendments. Several studies have considered the work of individual committees in the House of Commons including Susanna Kalitowski's descriptive study of five major government bills²⁵⁵ and Russell and John's work on the passage of the Identity Cards Bill. The latter work saw the coding of all 859 Commons and Lords amendments to the bill between 2005 and 2006. They acknowledge the work of Griffith and state their objective as 'to apply and extend his methods'²⁵⁶. Special mention must be made here to the work currently being undertaken by the Constitution Unit. Although not yet completed, this three year project considers the policy impact of parliament on government legislation and utilises the methods employed by Griffith, tracing all amendments made to a series of ten case study bills from the 2005 and 2010 Parliaments.

Empirical analysis of this type continues however, to be more prevalent in legislatures further afield. Of particular note here is the work of Cairney and Shephard²⁵⁷ and of Arter²⁵⁸ on committees in the Scottish Parliament. Cairney and Shephard's study of legislative amendments is pitted as 'the first systematic attempt to investigate...[its]... legislative impact'²⁵⁹ and codes all amendments made to government bills between 1999 and 2003. They stress the importance of amendment analysis; a methodological approach which has been 'largely neglected in British analysis'²⁶⁰ since Griffith's work. Most

²⁵⁴ I Burton and G Drewry, *Legislation and Public Policy: Public Bills in the 1970 – 74 Parliament*, London, Macmillan Press, 198, p.118.

²⁵⁵ S Kalitowski, 'Rubber Stamp or Cockpit? The Impact of Parliament on Government Legislation', *Parliamentary Affairs*, 61, 4, 2008, pp. 694 – 708.

²⁵⁶ M Russell and J Johns, 'Bicameral Parliamentary Scrutiny of Government Bills: A Case Study of the Identity Cards Bill', *Paper presented to the Political Studies Association Conference*, University of Bath, 11 – 13 April 2007, p. 2.

²⁵⁷ P Cairney, 'The Analysis of Scottish Parliament Committee Influence: Beyond capacity and structure in comparing West European legislatures', *European Journal of Political Research*, 45, 2, 2006, pp. 181 – 208.

²⁵⁸ D Arter, 'On Assessing Strengths and Weaknesses in Parliamentary Committee Systems: Some preliminary observations on the new Scottish Parliament', *Journal of Legislative Studies*, 8, 2, Summer 2002, pp. 93 – 117.

²⁵⁹ M Shephard and P Cairney, 'The Impact of the Scottish Parliament in Amending Executive Legislation', *Political Studies*, 53, 2, 2005, p. 303.

²⁶⁰ *ibid.*, p. 305.

importantly, they warn against taking amendment success at 'face value'²⁶¹, arguing that not all amendments are equally substantive. This has been echoed by previous studies of committees outside the UK²⁶². Building on Griffith's foundations for amendment categorisation, they therefore consider the success of three types of amendment²⁶³. Arter reinstitutes the discussion of the inputs and outputs²⁶⁴ of committee work and asks that we concentrate on 'the output end of the equation'²⁶⁵. He establishes three primary indicators of legislative output for committees in the Scottish Parliament; the number of proposed and successful committee bills, the number of proposed committee amendments and the impact of unanimous committee inquiry reports²⁶⁶. However, his work echoes that of others in that it lacks some quantitative evidence. When referring to the number of committee amendments for example, he states that the committee amendment provision has been 'similarly underused'²⁶⁷, but offers no evidence in support of this conclusion.

Another source of rich amendment studies at present is the European Parliament. Kreppel's 2002 study of the cooperation and co-decision procedure²⁶⁸ coded over 1000 amendments over a seven year period, from 47 legislative proposals²⁶⁹. She codes amendments by the type of procedure used, the point of tabling (first or second reading) and whether they referred to the text of the proposal or the introductory recitals²⁷⁰. These are then further classified into three levels of substantiveness. At the lowest level an amendment clarified an element of text without substantially changing it whilst others may expand the applicability or domain of the text. At the highest level, amendments added a new policy dimension to the proposal or whether they were compound amendments (doing more than one of these things). The different amendments were given values of 1 to 4²⁷¹. Although her coding frame is a development from the simple dichotomy favoured by Griffith, Kreppel again acknowledges the limitations of applying

²⁶¹M Shephard and P Cairney, 'The Impact of the Scottish Parliament in Amending Executive Legislation', *Political Studies*, 53, 2, 2005, p. 308.

²⁶²P G Thomas for example states that 'Scores, based upon the number of successful opposition or backbench amendments to government legislation are largely, if not wholly, misleading', P G, Thomas, 'The Influence of Standing Committees on Government Legislation', *Legislative Studies Quarterly*, 3, 4, November 1978, p. 686.

²⁶³M Shephard and P Cairney, 'The Impact of the Scottish Parliament in Amending Executive Legislation', *Political Studies*, 53, 2, 2005, p. 312.

²⁶⁴D Arter, 'On Assessing Strengths and Weaknesses in Parliamentary Committee Systems: Some preliminary observations on the new Scottish Parliament', *Journal of Legislative Studies*, 8, 2, Summer 2002, p. 110.

²⁶⁵*ibid.*

²⁶⁶*ibid.*, p. 112.

²⁶⁷*ibid.*

²⁶⁸A Kreppel, 'Moving Beyond Procedure: An Empirical Analysis of European Parliament Legislative Influence', *Comparative Political Studies*, 35, 7, September 2002, pp. 784 – 813.

²⁶⁹*ibid.*, p. 792.

²⁷⁰A Kreppel, 'Moving Beyond Procedure: An Empirical Analysis of European Parliament Legislative Influence', *Comparative Political Studies*, 35, 7, September 2002, p. 793.

²⁷¹A Kreppel, 'Moving Beyond Procedure: An Empirical Analysis of European Parliament Legislative Influence', *Comparative Political Studies*, 35, 7, September 2002, p. 794.

this form of code, given that clarifying amendments could at times be 'extremely contentious and significant'²⁷². The dependent variable in her analysis is the success of the amendment and is divided into two categories; adoption by the Council and adoption by the Commission. Thus, she is able to present the adoption rate of each type of amendment by each variable, using two logistic regression models to show the extent to which each amendment type may affect amendment success²⁷³. Most importantly, she emphasises the need to move away from 'simple amendment counts'²⁷⁴ and towards more sophisticated tools of analysis. Although these 'simple amendment counts' are the necessary starting point for any study of legislative amendments and influence, the techniques developed by Kreppel will be applied to some extent to House of Commons committees.

The 'Milder Influence' of Legislative Committees

The work of Blondel *et al.* marked a pivotal development in studies of formal committee deliberation and output. However, it also identified a further element of constraint operating in legislatures. Described as a 'milder influence'²⁷⁵, this included the introduction of amendments by the Government during the Report Stage of a bill, which had previously been pressed but withdrawn during the committee stage. Such influence had been touched upon in previous studies; Jennings for example had noted that a survey of the British Parliament would necessitate a study of 'the labour that goes on behind the scenes'²⁷⁶, but Blondel *et al.* can be credited with making the presence of these other forms of influence and their potential impact on legislative analysis more explicit. Although the identification of this less tangible form of legislative output was crucial, particularly for the analysis of legislative committees, Blondel was unable to place a value upon these influences.

The consequences of bill committee scrutiny on later stages of the parliamentary process have continued to be recognised by academics studying the legislative process across all legislatures²⁷⁷. Mattson and Strøm have referred to this as the 'delegation perspective,'

²⁷² A Kreppel, 'Moving Beyond Procedure: An Empirical Analysis of European Parliament Legislative Influence', *Comparative Political Studies*, 35, 7, September 2002, p. 795.

²⁷³ *Ibid.*, p. 796.

²⁷⁴ *Ibid.*, p. 801.

²⁷⁵ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 79.

²⁷⁶ W I Jennings, *Parliament, Reprinted Edn.*, Cambridge: Cambridge University Press, 1948, p. 492.

²⁷⁷ See for example K E Hamm and G Moncrief, 'Effects of Structural Change in Legislative Committee Systems On Their Performance in US States', *Legislative Studies Quarterly*, 2, 3, 1982, p.387.

whereby committees are the 'agents'²⁷⁸ of Members. In the UK, Norton's 1978 work found evidence that the government often incorporates dissenting views into its own bill²⁷⁹ whilst Kalitowski noted the influence of standing committee amendments during scrutiny in the House of Lords²⁸⁰. Additionally, studies frequently make reference to concessions made by the Government during committee stage itself. Cowley in particular notes the concessions made in the committee stage of the Asylum and Immigration Bill 1999²⁸¹, the Football Disorder Bill 2000²⁸², the Anti Terrorism, Crime and Security Bill 2001²⁸³, the Health and Social Care Bill 2003²⁸⁴. Although sporadic, the recognition of these influences is important and suggests that they are worthy of being assimilated into a more detailed study and allocated equal importance to the more formal and observable committee amendment process.

Committee Output as the Dependent Variable

The existence of only two truly empirical studies of the committee stage of the British House of Commons and the limited development of studies of informal committee output together point to a further methodological gap. No work has at present used a comprehensive measure of committee output as a dependent variable, through which to analyse other features of committee work. In his study of legislative amendments, Blondel declined to combine his indicators of viscosity into a 'combined index' on the basis that 'it is not axiomatic that the gain of an amendment in the short run is evidence of greater overall influence'²⁸⁵. Within a single country study however, such an approach is perhaps more feasible. Some limited attempts have been made to do so in the United States. David Ray in particular has used such a process when examining committees in the New Hampshire House of Representatives²⁸⁶. By measuring the ideological composition of the committees and the legislative experience of their members and chairmen against the percentage of committee recommendations accepted by the House²⁸⁷, he was able to show

²⁷⁸ I Mattson and K Strøm, 'Committee Effects on Legislation', in Döring, H and Hallerberg, M (eds.), *Patterns of Parliamentary Behavior: Passage of Legislation Across Western Europe*, Aldershot, Ashgate, 2004, p. 92.

²⁷⁹ P Norton, *Conservative Dissidents: Dissent within the Parliamentary Conservative Party 1970-74*, London, Temple Smith, 1978.

²⁸⁰ S Kalitowski, 'Rubber Stamp or Cockpit? The Impact of Parliament on Government Legislation', *Parliamentary Affairs*, 61, 4, 2008, p. 699.

²⁸¹ P Cowley, *The Rebels: How Blair mislaid his majority*, London: Politicos, 2005, p. 69.

²⁸² P Cowley, *Revolts and Rebellions*, London, Politicos, 2002, p.76.

²⁸³ P Cowley, *The Rebels: How Blair mislaid his majority*, London: Politicos, 2005, pp. 90-92.

²⁸⁴ *ibid.*, p. 154.

²⁸⁵ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 81.

²⁸⁶ D, Ray, 'Assessing the Performance of State Legislative Committees: A Case Study and a Proposed Research Agenda', *The Western Political Quarterly*, 39, 1, March 1986, pp. 126 – 137.

²⁸⁷ *ibid.*, p. 135.

for example, that the prior legislative experience of Congressmen was negatively correlated with success on the floor of the House²⁸⁸. Similarly, Hurley *et al.*²⁸⁹ developed a quantitative measure of legislative potential which combined majority size, party unity and the strength of opposition in the United States Congress, producing an LPPC (legislative potential for policy change) score. This measure was tested against an historical record of major policy changes made by certain Houses²⁹⁰. Their analysis proved that presidential landslides were very highly correlated with the LPPC score of a legislature²⁹¹. This research will replicate this methodology somewhat, adopting comprehensive measures of committee performance as the dependent variable for the first time in the analysis of committees in the House of Commons.

In conclusion one could concur with the view of Eulau and McCluggage that the literature on legislative committees is 'fragmented, incomplete, and haphazard'²⁹². The fragmentation is largely the result of the great discrepancies in the procedures of legislative committees and the difficulties inherent in replicating methodologies in more than one legislature. The literature can be seen to be incomplete as a result of the lack of strong quantitative empirical analysis and the little attention given to comprehensive studies of committee output. This is particularly true for bill committees in the House of Commons. This research therefore updates the work of Griffith, with a comprehensive account of the output of bill committees in the previous decade and applies a methodology more commonly seen in the analysis of continental European parliaments and the US Congress, measuring committee output through the coding of amendments and taking these broad measures of committee output as the dependent variable by which to measure other key input variables. Although scholars of other legislative institutions have warned against 'simple amendment counts', it is something which has not been completed in the UK for many years and which, when combined with measurements of informal amendment at later stages of the legislative process, proves valuable to the analysis of bill committees and legislative impact in the House of Commons.

²⁸⁸ D, Ray, 'Assessing the Performance of State Legislative Committees: A Case Study and a Proposed Research Agenda', *The Western Political Quarterly*, 39, 1, March 1986, p. 134.

²⁸⁹ P Hurley, D Brady and J Cooper, 'Measuring Legislative Potential for Policy Change', *Legislative Studies Quarterly*, 2, 4, November 1977, pp. 385 - 398.

²⁹⁰ *ibid.*, p. 390.

²⁹¹ *ibid.*, pp. 394-5.

²⁹² H Eulau and V McCluggage, 'Standing Committees in Legislatures: Three Decades of Research', *Legislative Studies Quarterly*, 9, 2, 1984, p. 261.

4. Overview of Bill Committees 2000-2010

Do Committees Make a Difference?

Before beginning a formal examination of the indicators of viscosity it is important to establish the context in which committees are working as this has direct implications for the capacity of bill committees to constrain the government. A comparison of the data collected here with that collected by Griffith highlights several important changes. Firstly, committees have a greater workload than ever before. This is perhaps a response to the growing size or length of legislation²⁹³ and results in committees sitting for longer. Secondly – and contrary to common belief – the attendance of appointed committee members has also increased. It is important to assess the extent to which these changes have the potential to affect the viscosity of bill committees today.

An Increased Workload for Bill Committees

When comparing the present sample of bill committees with that undertaken by Griffith, one of the most prominent observations to be made is that the workload of bill committees has increased significantly since the 1960s and 70s. This can be seen in both the length of time allocated for committee scrutiny and in the number of amendments being moved and discussed.

i) Committees are scrutinising bills for longer

Bill committee work is often derided by Members of the House who complain about the long sitting hours. Government backbenchers in particular speak of particularly arduous committees. Despite the changes made to sitting hours in recent years, modern bill committees are actually spending a greater amount of time scrutinising bills than previously. One MP interviewed even confessed to having fallen asleep in a particularly long committee²⁹⁴. Whilst Griffith's data suggests that committees spent an average of 18 hours²⁹⁵ scrutinising a single government bill in the 1969-1971 sessions²⁹⁶, this has risen to 24 hours for the 2000-2010 sessions²⁹⁷; a significant increase. The longest committee

²⁹³ M Korris, 'Standing up for Scrutiny: How and Why Parliament should make Better Law', *Parliamentary Affairs*, 64, 3, 2011, p. 566.

²⁹⁴ Interview, Government Backbench MP, May 2010

²⁹⁵ Total time per session was listed by Griffith as follows: 1967-68 (814.36 hours), 1968-69 (352.20 hours), 1970-71 (478.47 hours).

²⁹⁶ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 17

²⁹⁷ See Appendix 7 for a sessional breakdown of the time spent in bill committees.

in the sample was the Proceeds of Crime Bill (2001-02 session) which spent 39 sittings and over 91 hours in bill committee. Although this is possibly a response to the growing size of government bills rather than an indication of a greater commitment to make more time available for scrutiny, bill committee scrutiny is accounting for a greater amount of parliamentary time than previously. One particularly long committee was the Company Law Reform Bill of the 2006-07 session, the longest bill ever introduced in the House. Speaking about the length of time the bill spent in committee and the fact that the government minister had to bring her young child with her to all of the sittings, one participant noted that 'so long were our deliberations that the young girl learned to walk'²⁹⁸. It should be noted that whilst the total time spent in committee has increased this is due to an increase in the number of sittings and not their length. The average length of an individual bill committee sitting has actually fallen²⁹⁹. A full breakdown of the length of bill committees is detailed in Appendix 7.

ii) The number of amendments discussed in committee has increased

When undertaking his research Griffith stated that 'in considering amendments moved to a bill, what is important is their relative effect on the bill, not their number'³⁰⁰. This is a very valid observation and still holds true for contemporary committees. However, the number of amendments tabled by committee members offers a useful illustration of how the work of bill committees has changed.

Griffith quotes the number of non government amendments 'selected to be grouped and discussed' as averaging 1402 per session between 1967 and 1971³⁰¹. This equates to an average of 46 amendments per bill³⁰². As *Table 3* demonstrates, modern bill committees have exceeded this number, averaging 125 per bill. The difference is even starker when one considers the methodological differences employed in the data collection process. Griffith's figures included all amendments which appeared on the Order Paper before each committee, whilst this study considered only those amendments which were actually moved or grouped and discussed within the committee sittings themselves. The number

²⁹⁸ V Baird, 1st *Sitting, Tribunals, Courts and Enforcement Bill Committee*, 15 March 2007, col. 4.

²⁹⁹ In particular the number of late night sittings has fallen significantly as bill committees now occupy more family friendly sitting hours on a more routine basis. Where it is felt that progress on a bill has been slow, afternoon sittings are usually extended but rarely go beyond 10.00 p.m. One exception was the 16th sitting of the Apprenticeships, Skills, Children and Learning Bill Committee in the 2008-09 session. The session lasted over sixteen hours, with the committee sitting until 4.30am despite a full day being left in the committee programme

³⁰⁰ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 14.

³⁰¹ *ibid.*, p. 75.

³⁰² Calculated from the figures listed by Griffith in pages 49 (number of government bills committed to standing committee per session) and 75 (number of amendments).

being formally moved or discussed in modern committees is thus currently over twice the average number of all amendments listed on the Order Paper for bills during the Griffith study.

Table 3. Amendments Moved or Discussed in Committee

Parliamentary Session	Number of amendments discussed in committee			
	Non government Amendments		Government Amendments	
	<i>Total</i>	<i>Average per bill</i>	<i>Total</i>	<i>Average per bill*</i>
2000-01-	1023	85	227	19
2001-02+	1588	122	969	75
2002-03	3114	208	1265	84
2003-04	2189	122	1074	60
2004-05-	686	114	129	22
2005-06+	3169	113	1286	46
2006-07	1381	92	565	38
2007-08	2020	126	1024	64
2008-09	1591	145	671	61
2009-10-	707	118	112	19
Average	1746	125	732	49

-Denotes short parliamentary session

+Denotes long parliamentary session

*Rounded to nearest whole number

It is helpful to illustrate this point further by considering the proportion of amendments moved by government and opposition members. Whilst the number of government backbench amendments has doubled to an average of 9 per bill since Griffith's work, the number of opposition amendments has seen over a fourfold increase, rising from an average of 26 per bill in the Griffith study to 111 today.

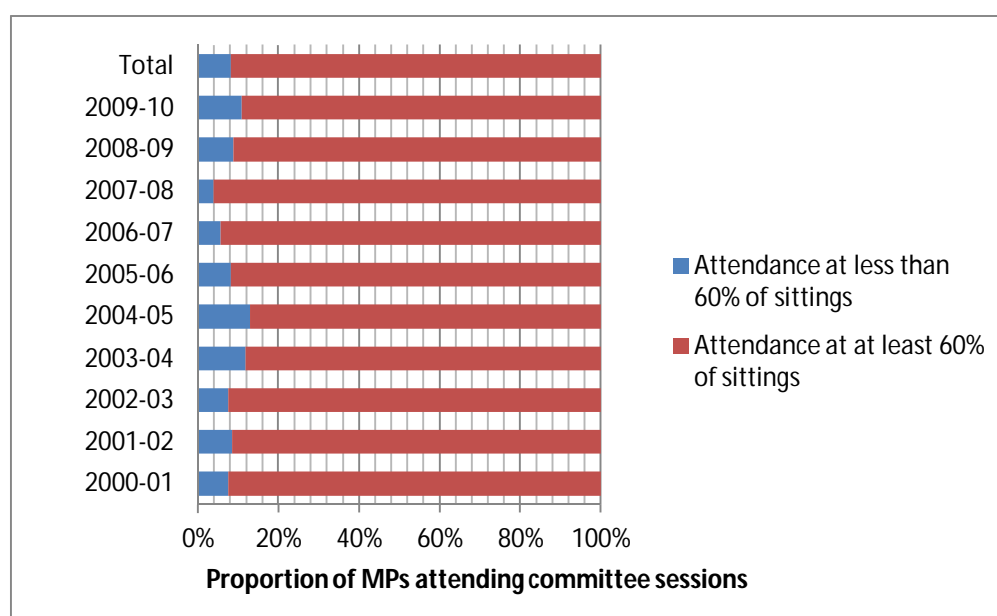
Another striking feature of this simple descriptive comparison in *Table 3* is the large number of government amendments being moved in modern bill committees. Griffith's figures suggest that the Government made an average of eight amendments to their bills in committee between 1967-71, but this rises to an average of 50 per bill in the 2000-2010 period. Twenty-first century governments are therefore making over six times as many amendments to their own bills.

Attendance at Committee Sittings

Reference is often made to the poor attendance of MPs at sittings of bill committees to which they have been appointed. Government backbenchers in particular are highlighted

as poor attendees³⁰³. This downgrades the importance of committees in the legislative process and implies that MPs do not take them seriously as a scrutiny tool. Yet bill committees appear to be better attended today. Griffith noted that the overall rate of attendance was ‘about 75 per cent’³⁰⁴. When the attendance of all committee members (front and backbench) is recorded, the average attendance between 2000 and 2010 is 87 per cent. This may imply little more than the effective role performed by party whips, or simply that the incentive to attend is greater. These attendance figures do however, compare favourably with attendance at select committee sittings. The Liaison Committee reported in 2012 that attendance at select committee meetings over the period 2010-12 averaged 73 per cent³⁰⁵. The levels of attendance at bill committees are also well above the sixty per cent rule introduced for select committees in 2010³⁰⁶. In terms of individual attendance the majority of MPs are good attendees (see *Figure 1*). Over 91 per cent of MPs attended over 60 per cent of committee sittings. A full breakdown by session can be seen in Appendix 8.

Figure 1: Proportion of Bill Committee Members Meeting the Sixty Per Cent Rule



³⁰³ See for example D Laws, *15th Sitting, Apprenticeships, Skills, Children and Learning Bill Committee*, 26 March 2009, col. 610.

³⁰⁴ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 55.

³⁰⁵ Select Committee Effectiveness, Resources and Powers, *Second Report of the Liaison Committee Session 2012-13*, HC 697- I, p. 12.

³⁰⁶ This motion was introduced following the recommendations of the Wright Committee. It ensures that Members who attend fewer than 60 per cent of select committee sittings in a given parliamentary session without good reason will be removed. See *HC Debates*, 4 March 2010, col. 1095.

Both figures for bill committee attendance listed here are a somewhat exaggeration of the truth. As one parliamentary clerk noted, attendance records simply measure “who is there at any time”³⁰⁷. This means that any committee member who took their place in the committee at any point during the sitting will be recorded as having attended. It does not mean that they were present for the whole sitting. Indeed, Members often leave during the course of a committee to attend to other matters and may only attend a few minutes of any given sitting. The record of attendance however, will record an MP simply as having been present for any part of a sitting, however short that attendance may have been. As Edward Garnier points out, “if hon. Members appear in the Committee five seconds before the end ... they are recorded as having attended”³⁰⁸. However, given that the method for recording attendance has not changed since the Griffith study, there is a marked increase in the number of MPs playing some role in bill committee work, however small this role may in fact be. These figures also appear to be higher than other Westminster model parliaments. Rush cites attendance in committees in the Canadian House of Commons as being between 40 and 70 per cent³⁰⁹.

What Lies Behind these Changes?

There is thus an observable difference between bill committees in the 1960s and 1970s and bill committees in the twenty first century House of Commons. Whilst there has been much continuity in the method and procedures used during line by line scrutiny in bill committee over the last forty years, there are also notable areas of change. Bill committees appear to be working much harder than before; spending a greater amount of time engaging in the scrutiny of government bills and processing a much higher number of both government and non government amendments. It is important to consider what has prompted these changes to the scrutiny undertaken in committee. Whilst it could be argued that MPs are simply more eager to engage in line by line scrutiny, tabling more amendments to bills and engaging more with committee debates, evidence gathered from the committee sittings themselves casts some doubt upon this.

Firstly, as has been noted in several studies, the workload of Members of Parliament has increased significantly since the mid twentieth century and shows no signs of slowing.

³⁰⁷ Parliamentary Clerk, 28 November 2012, Interview with author.

³⁰⁸ E Garnier, *4th Sitting Hunting Bill Committee*, 14 January 2003, col. 2.

³⁰⁹ M Rush ‘Committees in the Canadian House of Commons’, in J D Lees and M Shaw (eds.), *Committees in Legislatures: A Comparative Analysis*, Oxford: Duke University Press, 1979, pp. 219-222. It should be noted that when this research was carried out committees in the Canadian House of Commons performed the roles of both legislative committees and investigatory select committees.

MPs have an increasingly large workload to fit into what is effectively a four day working week in Parliament. Such is the pressure on time that bill committee work often competes with other areas of parliamentary life for a Member's time. Lembit Opik (Liberal Democrat) for example has spoken of Members being "double or triple booked during the middle of the day"³¹⁰. This is despite research showing that MPs are working an average of 67 hours per week³¹¹. Additionally, Norton notes the growth of the constituency workload both in terms of correspondence from constituents and an increase in the number of days spent each month in the constituency³¹². Members are thus spending an increasing amount of their parliamentary time dealing with constituency issues, whether this be in their own offices or on the floor of the House. A recent Hansard Society analysis of the roles of Members of Parliament found that just 12 per cent of MPs felt that the scrutiny of legislation was their most important role in the House; dealing with the grievances of constituents, holding the government to account and protecting constituency interests were all regarded as being more important³¹³. Austin Mitchell MP has noted that 'those who try to fulfil all the roles in their portfolio must fail because it can't be done'³¹⁴. It seems unlikely then, that the increasing pressure on Members' time has prompted a greater eagerness to engage in legislative scrutiny.

This is supported by evidence of attendance at committee sittings. Although the attendance records of bill committee meetings between 2000-2010 suggest that Members are attending a higher proportion of committee sittings, the method through which attendance is recorded at each sitting means that an MP may leave a select committee meeting to attend the latter part of a bill committee sitting and still be recorded as having been in attendance throughout. Among the reasons cited by Members for their absence from sittings of bill committees are; failing to receive notification from the party Whips in time³¹⁵, clashes with meetings of grand committees³¹⁶, select committee meetings³¹⁷ and participation in debates in the chamber and Westminster Hall³¹⁸. Astonishingly, the

³¹⁰ L Opik, *1st Sitting, Police (Northern Ireland) Bill Standing Committee*, 25 February 2003, col. 6.

³¹¹ R Fox and M Korris, 'A Year in the Life: The First Year Experience of Newly Elected Members in Westminster, Cardiff and Edinburgh', *Paper presented at 10th Workshop of Parliamentary Scholars and Parliamentarians, Wroxton College, 28-29 July 2012*, p. 14.

³¹² P Norton, 'The United Kingdom' in P Norton (ed.) *Parliaments and Citizens in Western Europe*, London: Frank Cass, 2002, pp. 22-27.

³¹³ Hansard Society: Commission on Parliamentary Scrutiny, *The Challenge for Parliament: Making Government Accountable*, London: Dods, 2001, p. 142. See also M Rush and P Giddings, *Parliamentary Socialisation: Learning the Ropes or Determining Behaviour?*, Hampshire: Palgrave Macmillan, 2011, pp. 109-113.

³¹⁴ A Mitchell, 'The Role of an MP: The Backbencher's Lament', in N Baldwin (ed.), *Parliament in the 21st Century*, London: Politico's, 2005, p. 71.

³¹⁵ See for example P Luff, *1st Sitting, Hunting Bill (Recommitted)*, 3 July 2003, col. 15.

³¹⁶ L Opik, *17th Sitting, Hunting Bill Committee*, 4 February 2003, col. 791.

³¹⁷ See for example P Rowen, *6th Sitting, UK Borders Bill Committee*, 6 March 2007, col. 182.

³¹⁸ C Chope, *2nd Sitting, Traffic Management Bill Committee*, 27 January 2004, col. 52.

reasons also include Members being allocated to two bill committees at the same time³¹⁹. A full breakdown can be seen in Appendix 9. Even Ministers are not immune from such time pressures. On one occasion Don Touhig (Labour) apologised to Members of the Planning and Compulsory Purchase Bill Committee for not being able to attend until the tenth sitting, admitting that 'in the past few weeks, I have been on three different Bills, at different stages'³²⁰. It seems unlikely therefore, that this apparent increase in scrutiny is due to MPs having a greater enthusiasm for bill committee scrutiny. MPs are in fact juggling an ever greater burden of committee work alongside an increase in their other parliamentary and constituency duties.

A more plausible explanation behind the increase in the number of amendments being moved and discussed in bill committees is changes to the content of government legislation since the 1960s and 70s. Firstly, the astonishing increase in the number of government amendments moved in bill committees suggests that committees are increasingly important as a vehicle for executive scrutiny of its own bills. It may simply be that committee is a convenient place for the government to make minor changes to its own bills or that poorly drafted or hastily written legislation requires further amendment in committee. One long serving MP noted that government bills are 'often less well prepared'³²¹ than previously and so invariably require greater amendment. The Nationality, Immigration and Asylum Bill for example was said to have been 'rewritten by the Government as they went along'³²² in committee.

Government amendments can be seen to take up valuable time; time which could otherwise be used for scrutiny by the opposition or government backbenchers. There is already some evidence of this. For instance, although the number of government backbench amendments discussed in committee has increased, they account for a much smaller proportion of all committee amendments, falling from nearly ten per cent in the 1967-71 period, to just over five per cent in the 2000-2010 sessions.

Whilst most are little more than 'technical' or 'minor drafting' amendments which are moved and passed in routine fashion, there is always the opportunity for committee members to probe the minister for more detail on any given amendment. Those of this opinion would argue that it increases the opportunities for viscosity. Others however, are

³¹⁹ See for example, P Robinson, *2nd Sitting, Electoral Administration Bill Committee*, 15 November 2005, col. 52.

³²⁰ D Touhig, *10th Sitting, Planning and Compulsory Purchase Bill Committee*, 23 January 2003, col. 411.

³²¹ Opposition MP, 3 November 2010, Interview with author

³²² D Heath, *1st Sitting, Criminal Justice Bill Committee*, 17 December 2002, col. 6.

of the opinion that the increase in government amendments in recent years is simply the product of rushed legislation.

Secondly, it may be a reflection of the growing volume and complexity of government legislation. It is commonplace for MPs and academics to note the increasingly crowded legislative timetable and the increase in the volume of legislation. Korris notes that whilst the number of bills introduced in a given session has seen no significant increase, the actual length of modern legislation 'is significantly greater than in the past'³²³. Bill committees in the 2000-2010 sessions have witnessed much disdain from opposition MPs regarding the manner in which government legislation is handled. There are frequent references to 'Wallace and Gromit' bills in which it seems – at least to the participating Members – that 'the track is laid as the committee proceeds'³²⁴. This, combined with the number of so-called 'Christmas Tree' bills which cover a wide range of different aspects of departmental policy, makes legislation more complex for committees to scrutinise on a line by line basis. Indeed, Korris cites the Criminal Justice Act 2003 as one which was 'bedevilled by contradictory goals and inconsistent principles'³²⁵. The 331 government amendments tabled to the bill in committee suggest that many drafting errors remained when the bill was first presented to Parliament. It is also perhaps what also prompted the 471 non government amendments. With government bills seemingly becoming longer, more complicated and increasingly poorly drafted, the increase in amendments tabled by both the government and other committee members may be borne out of necessity rather than a greater desire or greater time to scrutinise legislation.

Thirdly, the increase in the number of amendments tabled by non government members of bill committees may be the result of an increase in lobbying by outside organisations. Such activity by lobby groups is said to have increased both quantitatively in terms of contact with MPs and qualitatively, with groups increasingly writing detailed briefs on why a particular amendment should be made to a bill³²⁶. A survey of groups in 1986 found that 62 per cent had asked an MP to table an amendment to a bill; this figure is most likely to have increased since then³²⁷. Shadow Ministers have very few resources to assist in the scrutiny of bills and in the drafting of amendments. They do not benefit from the

³²³ M Korris, 'Standing up for Scrutiny: How and Why Parliament should make Better Law', *Parliamentary Affairs*, 64, 3, 2011, p. 566.

³²⁴ K Brennan, 1st Sitting, *Children and Young Persons [HL] Bill Committee*, 24 June 2008, col. 5

³²⁵ M Korris, 'Standing up for Scrutiny: How and Why Parliament should make Better Law', *Parliamentary Affairs*, 64, 3, 2011, p. 567.

³²⁶ See for example P Norton, *Parliament in British Politics*, Basingstoke: Macmillan, 2005, p. 200.

³²⁷ P Norton, *Parliament in British Politics*, Basingstoke: Macmillan, 2005, p. 201.

assistance of the parliamentary draftsmen that are available to the Government. As one Minister explained “you’ll get a lot of amendments sent to you as an Opposition Shadow Minister saying ‘will you table this amendment, will you table that amendment? ... you normally only get one researcher helping you”³²⁸. This is supported by a Liberal Democrat spokesman who described the rush to draft and table amendments for bill committees with very little assistance:

“I think really you fly by the seat of your pants really and try to get your amendments down in time and try to think about something to say about the amendment. And I mean it’s very, we think we’re busy now, and you’ve got plenty to do, but then if you’ve got 8 hours of committee in a week and then preparation for that committee as well, you’ve got a huge amount of work really. We haven’t got twenty civil servants taking turns to inform you about everything that you should know, and passing you bits of paper all the time, you’ve got to do it on your own.”³²⁹

The rise in legislative activity by outside organisations thus supplements the otherwise meagre resources available to opposition MPs, providing amendments that are ready to be tabled for bill committees. In essence, they act as ‘substitute research assistants’³³⁰ and are likely to be responsible for at least a small proportion of the increase in non government amendments being tabled in bill committees.

Fourthly and most relevant to the increase in the number of managerial amendments tabled by committee members, is the change in the use of parliamentary material in legal proceedings as a result of the *Pepper v Hart* ruling in 1993. This case is often cited by Members to demonstrate the utility of small drafting changes intended to clarify ambiguous words or phrases within bills³³¹. As a result of the *Pepper v Hart* ruling by the House of Lords, courts are able to refer to parliamentary material, including committee debates ‘where legislation is considered to be ambiguous or obscure, or leads to an absurdity’ and where ‘the parliamentary material consists of one or more statements and their effect and where the statements relied upon are clear’³³². Thus, Members may be encouraged to table a greater number of amendments to clarify phrases within the bill – or at least feel that they have greater grounds to do so – since the early 1990s.

³²⁸ Government Minister, 5 September 2011, Interview with author.

³²⁹ Liberal Democrat Spokesman, 24 November 2010, Interview with author.

³³⁰ P Norton, *Parliament in British Politics*, Basingstoke: Macmillan, 2005, p. 207.

³³¹ See for example G Allen, *5th Sitting, Criminal Justice Bill Committee*, 9 January 2003, col. 22.

³³² W McKay *et al.* (eds.), *Erskine May: Parliamentary Practice*, 23rd edn, London, Lexis Nexis, 2004, p. 107.

Potential for Viscosity in Committees

There has therefore been a great change in the work of bill committees on a quantitative basis over the last thirty years since Griffith's study. Equally the context in which committee members are working has also seen great change. This will invariably have some effect upon the viscosity of committees and is important to take into consideration before formally analysing amendments. There are two key areas to consider; the potential for greater viscosity to be exerted and the value of viscosity.

i) Potential for Greater Viscosity to be Exerted

At the most basic level, it would be expected that the higher frequency of amendments being tabled to government bills should result in an increase in the number of amendments being accepted or acted upon in some way by Government Ministers. There is greater opportunity for committee members to probe ministers for detail on amendments. This is particularly true of the large number of government amendments. The presence of more MPs at committee sittings may be a useful tool of persuasion and allow Members to press their amendments more forcefully.

However, a cautionary note must be added here. Whilst in some respects the greater number of amendments can be interpreted as a positive development, the overcrowding of committee with high volumes of amendments may only add to the difficulties facing committees and hamper effective scrutiny. If higher numbers of amendments result in less time for discussion and a wide variety of different options, this may impede committee impact. There will be less time to persuade a Minister of the benefits of a particular change and a greater number of options on the table. Related to this, the increase in the number of government amendments reduces the time available for the discussion of non government amendments. Better attendance by MPs could exacerbate this; discussions may be prolonged by those simply wishing to speak, reducing the time available for such high numbers of amendments.

ii) The Value of Viscosity

Given the constraints in which committee members are operating it is important to consider their motivation when tabling amendments and thus the value of committee viscosity. It has already been noted that the increasing workload of Members means that MPs are less likely to actually write amendments themselves. Outside organisations and parliamentary researchers are now responsible for a large proportion of amendments

tabled for discussion. MPs readily admit that they are either too busy or ill-informed to write amendments themselves. One frontbench MP interviewed even confessed to handing a government bill to his wife one evening so that she could draft some amendments to table whilst he made progress with other work³³³. Others note that they only table amendments if they find themselves with nothing better to do. David Wilshire for instance told the Traffic Management Bill Committee (2003-04) that the only reason his amendments had been tabled was due to the lack of good television to watch in the evenings:

"One thing that any Minister should hope for when he discovers that I am on a Standing Committee dealing with a Bill is that there are good programmes on the television. If there are not, I am prone to pick up a Bill and say to myself of an evening, "I wonder what is wrong this time?" It is the result of having bad television programmes recently that amendments Nos. 6 to 11 appear on the Order Paper, after one of those evenings when I thought that it would be useful to try to improve yet another piece of shoddy legislation."³³⁴

It would not be true then to state that MPs truly wish to see all the amendments that they table actually come to fruition. Ignoring the fact that some are simply amendments designed to probe, others are simply the result of MPs wishing to look efficient; to do their job effectively and to use all of the time available for scrutiny. This is particularly true of the opposition frontbench. Although impossible to measure accurately this is something which must be taken into consideration when considering the large number of amendments being discussed in contemporary bill committees and their relative success rates. A significant number of the unsuccessful opposition amendments were in all likelihood never intended to be successful by those Members who drafted them anyway.

In conclusion, the contemporary context in which committee members are working differs from that analysed by Griffith in two important respects. The committee workload is significantly greater than ever before; committees are processing huge numbers of amendments including those emanating from the government itself and MPs are working under even greater time constraints than ever before. These changes have clear consequences for the ability of committees to constraint the government and to make a difference to government bills. Detailed analysis of committee amendments to bills will help to establish whether this has been a change for the positive.

³³³ Frontbench Opposition MP, December 2010, Interview with author.

³³⁴ D Wilshire, *2nd Sitting, Traffic Management Bill Committee*, 27 January 2004, col. 53.

5. Measuring the Viscosity of Bill Committees: Formal Committee Output

Do Committees Make a Difference?

Comparing the empirical analysis of bill committee scrutiny over the last decade with that compiled by Griffith suggested that bill committees were working even harder than before; sitting for longer and processing a much higher number of amendments. It is therefore pertinent to consider whether this is reflected in the impact committees are making on government legislation; whether these greater inputs leading to better outputs in terms of rendering a bill 'more generally acceptable'³³⁵ and thus whether committees are able to exert high levels of viscosity or constraint on government bills. Such an analysis requires both a quantitative and a qualitative approach; one which considers firstly the frequency of successful amendments in bill committees and secondly, a judgement of how these changes affected the bills in question. In sum, it is necessary to establish the degree of viscosity taking place through the consideration of formal amendments in committee and the impact of this viscosity upon the content of government legislation.

Proportion of Bills Receiving Amendments

As discussed previously, 'simple'³³⁶ amendment counts remain a useful means by which to gauge the extent of formal committee activity and thus presents an initial picture of the viscosity of bill committees. Given that such an analysis has not been completed comprehensively in the UK for over three decades³³⁷, it is as valuable for purely descriptive purposes as it is for detailed analysis and constitutes a useful point of departure.

³³⁵ W McKay *et al.* (eds.), *Erskine May: Parliamentary Practice*, London: Lexis Nexis UK, 2004.

³³⁶ A Kreppel, 'Moving Beyond Procedure: An Empirical Analysis of European Parliament Legislative Influence', *Comparative Political Studies*, 35, 7, September 2002, p.801.

³³⁷ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974.

Table 4. Bills Amended in Committee by Session

Parliamentary Session	Bills (N)	Bills Leaving Committee Amended*		Bills Receiving Successful Non Government Amendments	
		N	%	N	%
2000-01-	12	10	83	2	17
2001-02+	13	12	92	4	31
2002-03	15	13	87	5	33
2003-04	18	17	94	3	17
2004-05-	6	5	83	2	33
2005-06+	28	24	86	5	18
2006-07	14	13	93	2	14
2007-08	16	16	100	2	13
2008-09	11	11	100	2	18
2009-10-	6	4	67	1	17
2000-2010	139	125	90	28	20

- Denotes short parliamentary session

+ Denotes long parliamentary session

*Includes all amendments (government and non government)

Table 4 presents a basic overview of the proportion of bills being amended in committee. At first glance this number looks exceedingly high; 90 per cent of the bills in the sample are leaving committee in an amended form. That is, they were reported “as amended”³³⁸ in the Official Report. It implies that a very high level of viscosity is taking place; committees are successfully amending the vast majority of bills.

However, this figure is misleading as bills reported as being amended includes those in which the government is making changes to its own bills during committee stage. When these government amendments are excluded the figure is less impressive. Indeed, the number of bills receiving amendments *other* than from the government frontbench averages only 20 per cent in each parliamentary session³³⁹. Although much lower than the initial figure presented, this suggests that a fair degree of viscosity is still being exerted by committees. Regardless of the content of the changes being made, one fifth of all bills are being changed in some way by opposition MPs and government backbenchers. This figure alone would appear to rebuff the previous observations made by academics that bill committees are ‘fairly routine and standardized’³⁴⁰ and that they make no changes to the bills they are scrutinising. Bill committee is – in a general sense at least – an important stage of the legislative process in terms of amendments to government bills.

³³⁸ See for example *9th Sitting, Marine and Coastal Access [HL] Bill Committee*, 14 July 2009, col. 326.

³³⁹ See Appendix 10 for a full list of bills receiving successful *non government* amendments.

³⁴⁰ R Young, *The British Parliament*, London: Faber and Faber, 1962, p. 158.

Table 5. Bills Receiving the Greatest Number of Amendments in Committee

Bill	Session	Number of Amendments*
Companies [HL]	2005-06	510
Proceeds of Crime	2001-02	345
Criminal Justice	2002-03	339
Pensions	2003-04	331
Planning	2007-08	261

*Total includes all amendments. No distinction is made here between type of amendment (government/non government and managerial/substantial)

One can also take the bill committee as the unit of analysis and thus consider the frequency of amendments being made to each individual bill rather than frequencies for each parliamentary session. In this way it is possible to distinguish between committees making large numbers of changes (through either government or non government amendments) and those making no amendments at all. A bill committee achieving no amendments would arguably be demonstrating a lower viscosity than a committee which made fifty amendments. *Table 5* lists the five bills in the sample which received the highest number of amendments. These bills saw a huge number of amendments being made over the course of the bill committee; much higher than the average figure of 53 amendments per bill. The bill at the top of this list - the Companies [HL] Bill from the 2005-06 parliamentary session – saw nearly ten times the average number, receiving a total of 510 amendments.

Table 6. Bills Leaving Committee with No Amendments 2000-2010

Bill	Session
Children's Commissioner for Wales Bill	2000-01
Football (Disorder) (Amendment) Bill	2001-02
Regional Assemblies (Preparations) Bill	2002-03
Health (Wales) Bill	2002-03
Child Trust Funds Bill	2003-04
Northern Ireland (Offences) Bill	2005-06
Racial and Religious Hatred Bill	2005-06
Terrorism (Northern Ireland) Bill	2005-06
Regulation of Financial Services (Land Transactions) Bill	2005-06
Fraud (Trials Without a Jury) Bill	2006-07
Children, Schools and Families Bill	2009-10
Energy Bill	2009-10

These bills contrast enormously with the twelve bills in the sample which did not see a single amendment in committee (see *Table 6*). It suggests that – on paper at least - the bill committees of the former exerted a much higher degree of viscosity than the latter.

Indicators of Legislative Viscosity 2000-2010

Even at this most basic level of analysis it is apparent that some bill committees are exerting considerable constraint in terms of the passage of formal amendments, whilst others are failing to constrain the government at all. There are clearly some large discrepancies then between the ability of committees such as the Companies [HL] Bill Committee and the Energy Bill Committee to amend legislation. Whilst these figures are illuminating and give a good overview of the work of bill committees across the period in question, a proper assessment of the viscosity of these committees must consider each of the indicators established earlier in detail.

i) *Frequency of successful government amendments*

The first indicator to be considered is the frequency of successful government amendments moved in committee. *Table 7* shows a breakdown of government amendments in each session and demonstrates the very high success rates. In only two of the sessions studied have *any* government amendments been unsuccessful, the average across the decade being a 99.9 per cent success rate.

Table 7. Successful Government Amendments by Session

Parliamentary Session	Total Government Amendments	Amendments Passed	
		<i>N</i>	%
2000-01-	227	227	100
2001-02+	969	969	100
2002-03	1265	1264	99.9
2003-04	1074	1074	100
2004-05-	129	129	100
2005-06+	1286	1286	100
2006-07	565	565	100
2007-08	1024	1024	100
2008-09	671	662	98.7
2009-10-	112	112	100
2000-2010	7322	7312	99.9

-Denotes short parliamentary session

+Denotes long parliamentary session

Caution must be taken when dismissing these figures as irrelevant. Firstly, as Blondel notes, such figures are not unique to the House of Commons. Indeed 'most legislatures ... pass most of the bills which are presented by the executive and indeed scarcely alter these

bills against the wishes of the government'³⁴¹. It is important to take account of the context in which bill committees sit in the Commons. The large parliamentary majorities held by the government across the period under study meant that government members dominated every committee. If one adds to this the strong party discipline present then it is easy to see why the proportion of successful government amendments is so high.

Secondly, government amendments are not always the product of government thought. On many occasions they are a response to amendments or concerns expressed earlier in the committee. A good example of this is the insertion of New Clause 3 into the Tobacco Advertising and Promotion Bill Committee during the 2000-01 parliamentary session. The Minister, Yvette Cooper, noted that during the earlier debates in committee 'it became clear that there might be a lack of clarity'³⁴² in the regulations regarding the display of tobacco products in shops and that a distinction could be made between advertising a product and displaying a product for sale. Thus, a new clause was added to the bill to tighten a loophole which had been pointed out through committee debate. Similarly, a government amendment³⁴³ to the Homes Bill in the same session regarding housing authority notifications to homeless applicants was said to have been the 'result of concerted efforts by both sides of the committee'³⁴⁴ who had again raised the issue in earlier debate. This change was noted by Don Foster (Liberal Democrat) as being 'significant', showing 'the valuable work of the committee in its best light'³⁴⁵. In both cases the resulting amendment has been tabled and moved by the government – and has been coded as such – yet it would be incorrect to consider it as the government acting on its own initiative. It has made a legislative change in direct response to the bill committee.

Government amendments can also be responses to commitments made during the second reading debate, such as amendment 240 to the Identity Cards Bill of the 2005-06 session which made the initial setting of fees subject to parliamentary approval by the affirmative rather than the negative resolution procedure³⁴⁶. This was a response to the second reading debate and a commitment made by the Home Secretary during the course of that debate that he would be 'prepared to consider changes in Committee'³⁴⁷. Finally they may

³⁴¹ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 78.

³⁴² Y Cooper, *7th Sitting, Tobacco Advertising and Promotion Bill Standing Committee*, 6 February 2001, (col not available).

³⁴³ Amendment 108

³⁴⁴ D Foster, *12th Sitting, Homes Bill Standing Committee*, 1 February 2001, (col not available).

³⁴⁵ *ibid.*

³⁴⁶ T McNulty, *11th Sitting, ID Cards Bill Committee*, 21 July 2005, col. 433.

³⁴⁷ See C Clarke, *HC Debates*, 28 June 2005, col. 1160.

be responses to commitments made in the House of Lords, if this was where a bill began its passage. During the committee stage of the Mental Health [HL] Bill for example a series of three amendments were moved by Government Minister Rosie Winterton to introduce a power to make regulations to reduce the maximum length of standard deprivation of liberty authorisations. She noted that these were tabled 'in response to concerns that were expressed in the other place'³⁴⁸. In both of these cases, the bill committee is acting as the vehicle for changes to government bills, though the case for viscosity being demonstrated is most evident where the government have responded directly to earlier committee debate.

ii) *Government Defeats in Committee*

It is also useful to consider the small number of government amendments which were unsuccessful. One would firstly expect a committee with a high viscosity to see several government amendments being withdrawn or defeated in committee. Yet, the unsuccessful amendments are drawn from just three bill committees (see *Table 8*). In all other committees every government amendment moved was successful. This is not to say that the successful amendments were not challenged by committee members; most amendments will have been discussed by the committee. However, in no other case was an amendment formally withdrawn, negatived or defeated in committee. The low number of defeats is common to bill committees for much of the post war era; though a marked decline from their apparent peak in the 1970s³⁴⁹.

Although the defeat of government amendments in committee is rare, those that did occur demonstrate two ways in which committees can exert formal constraint over government amendments: formally defeating government amendments and prompting the government to withdraw their own amendments in order to examine or clarify issues further. The former was demonstrated during the Apprenticeships, Skills, Children and Learning Bill Committee in the 2008-09 session where four consecutive amendments were formally defeated in committee. This was not the product of a small rebellion by government backbenchers, but of good timing by opposition MPs who called for a division

³⁴⁸ R Winterton, *11th Sitting, Mental Health (HL) Bill Committee*, 15 May 2007, col. 390.

³⁴⁹ Schwarz notes that whereas the government used to lose only about one division in 100 in standing committee, its control slipped so greatly that over the sessions following 1976 it actually faced defeat on about one division in every eight in standing committee. During the 1975-76 session these defeats peaked at 26; over eight times as many as occurred in the whole of the 2000-2010 period. See J E Schwarz, 'Exploring a New Role in Policy Making: The British House of Commons in the 1970s', *American Political Science Review*, 74, 1, 1980, pp. 23-37.

on a series of government amendments when several government backbenchers failed to turn up at the start of a sitting. Such was the seriousness of these defeats that the events were reported in online media – a rarity for bill committee proceedings – and described as ‘chaos’³⁵⁰. Whether MPs actually objected to the amendments or whether this was simply an example of opportunism is debatable, but it is an excellent example of a committee formally constraining the government and preventing it from making substantive changes to one of its own bills.

Table 8. Unsuccessful Government Amendments

Session	Bill	Amendment	Outcome	Reason
2002-03	Health and Social Care (Community Health Standards)	286	Withdrawn	Government decided not to proceed with the amendment following advice from parliamentary counsel
2008-09	Apprenticeships, Skills, Children and Learning	NC 17 NC 18 429 430 431 432	Negatived Negatived Defeated Defeated Defeated Defeated	Not Selected Government defeated in committee as Labour MPs failed to turn up
2008-09	Marine and Coastal Access [HL]	59 60 61	Withdrawn Withdrawn Withdrawn	Minister withdrew amendments following concerns expressed by opposition MP ³⁵¹

The latter is demonstrated by the Marine and Coastal Access [HL] bill in the same parliamentary session. The government minister withdrew three amendments following concerns expressed by Richard Benyon (Conservative) regarding a definition of a physical feature. Ann McKechin (Labour) conceded to withdraw the amendments “so that we can seek further clarification”³⁵². This is perhaps the best example of viscosity being exerted in relation to government amendments. Committee members expressed their concerns formally and by doing so caused the government to change its mind and withdraw an amendment to a bill.

³⁵⁰ Dale, ‘Dawn Butler Does It Again! Labour Loses Key Committee Votes’, *Iain Dale’s Diary*, 26 March 2009, <http://iaindale.blogspot.co.uk/2009/03/exclusive-dawn-butler-does-it-again.html> (accessed 13 July 2012)

³⁵¹ Richard Benyon expressed concerns about the amendment, concerning the definition of a physical feature. See *7th Sitting, Marine and Coastal Access Bill Committee*, 9 July 2009, col. 256.

³⁵² A McKechin, *7th Sitting, Marine and Coastal Access Bill Committee*, 9 July 2009, col. 256.

iii) *Frequency of successful non government amendments*

The proportion of successful non government amendments is in many respects the most interesting indicator of viscosity. *Table 9* offers a breakdown of these amendments for each parliamentary session.

Table 9. Success of Non Government Amendments by Session

Parliamentary Session	Total Non Government Amendments*	Amendments Passed	
		<i>N</i>	%
2000-01-	1021	6	0.6
2001-02 ⁺	1588	21	1.3
2002-03	2846	32	1.1
2003-04	2189	11	0.5
2004-05-	686	3	0.4
2005-06 ⁺	3168	20	0.6
2006-07	1381	2	0.1
2007-08	2020	3	0.1
2008-09	1591	4	0.3
2009-10-	707	1	0.1
2000-2010	17197	103	0.6

*Includes all amendments which were moved or grouped for discussion in committee. It does not include other amendments listed on the Order Paper which were not reached in committee.

⁺Denotes short parliamentary session

-Denotes long parliamentary session

Two points of note can be drawn from these data. Firstly, the number of non government amendments being made to bills is very low, falling below ten amendments for most parliamentary sessions. Three sessions in particular stand out as having a large number of successful non government amendments (2001-02, 2002-03 and 2005-06). The higher figure for the 2005-06 session can be accounted for somewhat as this was a particularly long session with a much higher number of bills than average. Possible explanations for the larger number of amendments in the 2001-02 and 2002-03 sessions will be considered in more detail later, but include the use of free votes in some committees. Secondly, the proportion of successful amendments is extremely low considering the number of non government amendments being moved in committee. On no occasion have more than two per cent of amendments in a session been successful; indeed the average across the decade is only 0.6 per cent. The actual rewards for tabling such high numbers of amendments in committee appear very low.

As before, it is also useful to examine individual committees alongside the sessional averages. When one looks at the frequency of non government amendments to individual bills (*Table 10*) only one bill – the Proceeds of Crime Bill – stands out as having a large

number of successful non government amendments. Whilst others such as the Hunting Bill have seen several successful non government amendments, the actual numbers remain small.

Table 10. Bills with the Highest Frequency of Successful Non Government Amendments

Bill	Session	Number of Non Government Amendments
Proceeds of Crime	2001-02	15
Hunting	2002-03	8
Electoral Administration	2005-06	6
Company Law Reform	2005-06	6
Criminal Justice	2002-03	5

Comparison with the data collected by Griffith demonstrates that the number of successful non government amendments has actually changed considerably. Despite the increase in the number of non government amendments being moved in modern bill committees, the actual number of these being agreed to by the government minister has fallen dramatically. Whilst this is true for both opposition and government backbench amendments the greatest fall has been in the number of opposition amendments. These averaged 44 per session in the Griffith study, but only six in the contemporary sample. Opposition amendments are much less likely to be successful in modern committees than they were thirty years ago.

Table 11. Successful Government Amendments

Sample	Total Successful amendments		Average per session	
	<i>Government Backbench</i>	<i>Opposition</i>	<i>Government Backbench</i>	<i>Opposition</i>
1967-71 ⁺	40	131	13	44
2000-2010	33	55	3	6

⁺ *Figures adapted from Griffith, 1974, 93*

When one considers the substantiveness of these amendments (as displayed in *Table 12*) the vast majority of non government amendments agreed to in committee are those covering very simple matters; correcting drafting and spelling mistakes in government bills and clarifying the terms used. The Proceeds of Crime Bill Committee was noted earlier as receiving the greatest frequency of successful non government amendments and thus appeared to have the highest viscosity. However, when the substantiveness of the amendments is considered this is less so; all of the successful amendments were coded as managerial. They included minor linguistic changes such as replacing “with a view to” and

inserting “with an intention to”³⁵³ and the repeal of provisions from existing legislation which the bill had made redundant. None of these changes could be considered to be particularly significant or ground-breaking; they simply made the bill more technically sound.

This is not to say that such amendments do not serve a useful purpose. Indeed, MPs often feel victorious to have made even a very minor amendment to a bill, describing it as a ‘feeling of success’³⁵⁴. In the above example, frontbench spokesman Dominic Grieve claimed that the minister had “made [his] Christmas”³⁵⁵ by accepting the minor changes to the Proceeds of Crime Bill. Changes made to clarify the terms used in a bill or to correct minor errors are certainly an improvement and worthy of being made. Comparison with Griffith’s data illustrates that the number of minor amendments accepted in committee has declined, falling by over fifty per cent from the number observed in this earlier study. It seems that contemporary committees therefore are struggling to make even minor typographical changes to legislation.

Table 12. Substantiveness of Amendments Passed in Committee

Sample	Government Backbench		Opposition		Total	
	Minor	Substantial	Minor	Substantial	Minor	Substantial
1967-71+	30	10	119	12	149	22
2000-2010	19	14	46	9	65	22*

*7 of these were drawn from the Hunting Bill Committee (2002-03 session)

The number of amendments across the decade that were coded as being ‘substantial’ is very low, accounting for just 25 per cent of all successful non government amendments. Nearly a third of these were made to just one bill – the Hunting Bill – in the 2002-03 parliamentary session. These amendments made up a much higher proportion of successful non government amendments in the contemporary sample than in Griffith’s (33 per cent compared to 14 per cent). It is tempting to state that this is evidence of greater viscosity. However, it must be remembered that these classifications are only estimates as Griffith does not give large amounts of detail on what he considered to constitute a minor or an important amendment.

³⁵³ Amendment 547, *34th Sitting, Proceeds of Crime Bill Committee*, 29 January 2002, col. 1195.

³⁵⁴ J Paice, *4th Sitting, Natural Environment and Rural Communities Bill Committee*, 23 June 2005, col. 125.

³⁵⁵ D Grieve, *21st Sitting, Proceeds of Crime Bill Committee*, 18 December 2001, (col not available).

Formal Amendments and Legislative Viscosity: The Hunting Bill - A Less Compliant Committee

Studying the fate of formal amendments in bill committees shows very little that we did not already know. If anything it could be said to simply corroborate the existing conceptions of bill committees as relatively supine bodies. Although large numbers of non government amendments are tabled, very few are successful and the overwhelming majority of successful amendments emanate from the government frontbench. But this does not mean that formal scrutiny by a bill committee is of no value to the legislative process or that committees are unable to constrain the government through the formal mechanisms available. Although non government amendments may only 'occasionally'³⁵⁶ be successful and government amendments may only 'occasionally'³⁵⁷ be defeated, such occasions are worthy of further attention and are evidence of legislative viscosity. These instances may be isolated but they are nonetheless important. One such instance is the Hunting Bill in the 2002-03 parliamentary session. This session was highlighted earlier as one in which a much higher proportion of successful non government amendments were made to government bills. It is a good example of legislative viscosity being exerted through a bill committee and this makes a useful case study.

The Hunting Bill was introduced into the House of Commons in December 2002 as an attempt 'to reach a conclusion'³⁵⁸ on the issue of hunting with dogs. The Bill allowed a degree of fox hunting to continue under a licensing system. It spent over 72 hours in committee, being scrutinised by MPs over the course of 27 sittings in January and February 2003. It was the longest sitting bill committee of the parliamentary session and the longest committee stage of any Hunting Bill ever considered by the House³⁵⁹.

A total of 310 amendments were moved or discussed during the committee, a much smaller number than would be expected given the number of sittings. This is testimony to the lengthy debates held around the controversial issues raised by the bill. When comparison is made with the typical bill committee (see *Figure 2*), it is apparent that government backbenchers were particularly active, being responsible for a much higher proportion of amendments discussed in committee than normal. Whilst the proportion of government backbench amendments between 2000-2010 averages just 4 per cent, the

³⁵⁶ R Young, *The British Parliament*, London: Faber & Faber, 1962, p. 158.

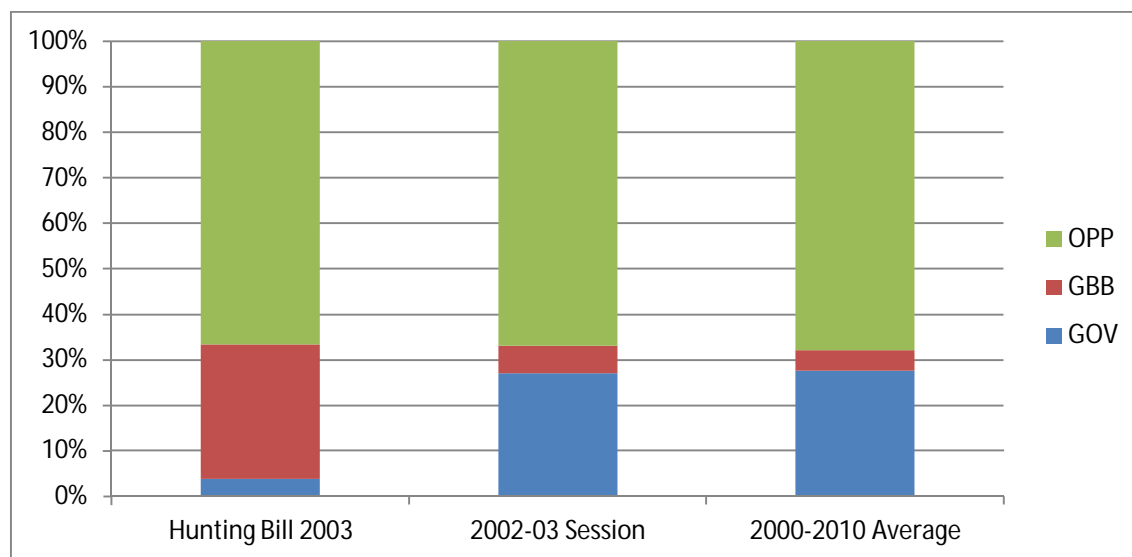
³⁵⁷ *ibid.*

³⁵⁸ A Michael, *HC Debates*, 16 December 2002, col. 570.

³⁵⁹ A Michael, *27th Sitting, Hunting Bill Committee*, 27 February 2003, col. 1258.

Hunting Bill committee saw over eight times this number (37 per cent). This is partly due to all parties having allowed free votes on the bill. The Government tabled fewer amendments than is typically seen in bill committees (4.8 per cent), whilst the proportion of opposition amendments discussed was significant (83.2 per cent), but was not a departure from the usual trend.

Figure 2. Proportion of Amendments Moved or Discussed in Committee



Key: OPP (Opposition), GBB (Government Backbench), GOV (Government)

The seven substantial amendments made to the bill during its committee stage (*Table 13*) were highly significant. They included the prohibition of terrier work underground and a change in the lower age for hunting licences from 18 to 16 years. Some of these changes received the support of the Government Minister, whilst others were passed despite government opposition. It was notable for the high quality of debate, with the three hour discussion of the terrier work clause being described as 'one of the most constructive debates we have had in committee'³⁶⁰. The committee was also notable for the degree of cross party cooperation and voting. Labour backbenchers often supported their opposition colleagues, with four Labour MPs voting in favour of a Conservative amendment to lower the age at which an individual could register to hunt³⁶¹.

³⁶⁰ A Michael, *25th Sitting, Hunting Bill Committee*, 25 February 2003, col.1122.

³⁶¹ Russell Brown, Colin Pickthall, Diana Organ and Eric Martlew all voted in favour of amendment 277. See *13th Sitting, Hunting Bill Committee*, 28 January 2003, col. 572.

Table 13. Substantial Amendments Passed in the Hunting Bill Committee (2002-03)

Amendment	Mover	Description
117	GBB	Require those wishing to carry out pest control with dogs to apply to a pest control tribunal
240 & 243	GBB	Allow the hunting registrar and tribunal to vary the conditions of hunting applications without requiring the consent of applicants
117	GBB	Change the reapplication period for hunting licenses which have been rejected by the Tribunal from 6 months to 12 months
New Clause 11	GBB	Prohibit the use of terriers underground
New Clause 10	GBB	Explicitly state in the bill that hare hunting is illegal and not suitable for registration under the tribunal system
277	OPP	Change the age at which an individual can register to hunt from 18 to 16 years.

KEY: GBB (Government Backbench), OPP (Opposition)

The changes made to the bill during its committee stage are an excellent example of how a bill committee can make a difference to a government bill. It had been 'changed significantly'³⁶² by the committee. Even the Government Minister commented that 'the animal welfare provisions have been strengthened and ... the content has been clarified as a result of the [committee] debate'³⁶³. Although some of these changes were reversed later on in the House, this case study remains an example of how a bill committee can make a significant difference to government legislation through the use of formal amendments. It is a patent example of a less compliant committee.

Explaining the Low Viscosity in Committee

It has been established then that whilst constraint can be exerted through formal committee mechanisms, this type of constraint is sporadic. The majority of committees see no significant changes being made to government bills by non government actors. Qualitative analysis of committee proceedings and evidence drawn from interviews with committee members points to three possible explanations: the presence of strong discipline in committee, particularly over the period in question; an extreme (and growing) reluctance on the part of government ministers to accept amendments raised in

³⁶² P Luff, *27th Sitting, Hunting Bill Committee*, 27 February 2003, col. 1250.

³⁶³ A Michael, *27th Sitting, Hunting Bill Committee*, 27 February 2003, col. 1253.

committee; and the recognition that formal mechanisms are not the best means through which to achieve change to government bills.

i) *Strong Committee Discipline*

The most obvious explanation for low formal viscosity is that the acquiescent behaviour of government backbenchers on the bill committees in question was the product of strong party discipline. The period in question covers ten years of Labour governments with substantial parliamentary majorities. The level of party discipline within the Labour party across this period is well documented, being described by Cran as 'almost legendary'³⁶⁴. As both Flinders³⁶⁵ and Kelso³⁶⁶ point out, this has underpinned an executive mentality or dominance which has pervaded all aspects of the legislative system. The bill committee arena is no exception. In terms of numbers, the government majority on any bill committee consists of only two or three MPs. It does not therefore require the actions of a large number of government backbenchers to cause problems for the government; to defeat a government amendment or to successfully support an opposition amendment and heightens the requirement for strong discipline within committee.

This discipline can be seen in terms of both the appointment of members and their behaviour in committee itself. Though appointments are officially made by the Committee of Selection³⁶⁷, in practice they are made by the party whips in consultation with the government minister. As one minister noted when interviewed, 'whips can filter out who goes on committee and if anyone speaks against the bill ... at second reading, the government are not going to put them on the bill committee'³⁶⁸. Rebellious MPs or those with strong opinions on a bill will typically not be appointed³⁶⁹. One government backbencher appointed to the Children, Schools and Families Bill Committee in the 2009-10 session commented that this was the first committee he had been appointed to in a decade as he was 'seen as troublesome,' and 'not on side with Labour's education policies'³⁷⁰. This is corroborated by an opposition MP who suggested that the most effective way to avoid being appointed to serve on a bill committee was 'to speak in the

³⁶⁴ J Cran, 'A View from a (Former) Whip', in Baldwin, N J (ed.) *Parliament in the 21st Century*, London: Politico's, 2005, p. 185.

³⁶⁵ M Flinders, 'Shifting the Balance? Parliament, the Executive and the British Constitution', *Political Studies*, 50, 1, 2002, pp. 23-42.

³⁶⁶ A Kelso, *Parliamentary Reform at Westminster*, Manchester: Manchester University Press, 2009, p. 36.

³⁶⁷ W McKay et al., *Erskine May: Parliamentary Practice, 23rd Edn*, London: Lexis Nexis UK, 2004, p. 99.

³⁶⁸ Shadow Minister, 15 December 2010, Interview with author.

³⁶⁹ See for example S A Walkland, 'Committees in the British House of Commons', in J D Lees and M Shaw, (eds.), *Committees in Legislatures*, Oxford: Duke University Press, 1979, pp. 254-5.

³⁷⁰ Government backbencher, 23 March 2010, Interview with author.

second reading and say these are the changes that I intend to propose'³⁷¹. Those government MPs who are more likely to seek to constrain the government are therefore unlikely to be appointed to a bill committee.

It is the appointment of the party whips which appears to heighten committee discipline. Whips have been a regular feature of bill committees since 1947³⁷². At least one – sometimes two³⁷³ – government whips will be appointed to a committee. As one former whip pointed out 'the whip runs the committee'³⁷⁴. It is well documented that government backbenchers are discouraged from speaking by their whip unless specifically asked to do so³⁷⁵. In terms of viscosity, this discipline extends into voting behaviour in committee. As the same whip notes:

'the Whip's job is to make sure the Government always wins any votes. Unless the Government wants to accept an amendment you're not going to win ... There's nothing worse as a Whip than losing a vote'.³⁷⁶

Thus, the strong discipline invoked by the presence of the government whip on committee affects the potential for viscosity to be exerted and is one possible explanation for the low number of successful amendments. Whilst rebellions in committee can and do happen, the actual number of divisions lost by the government remains very small.

ii) Ministerial Reluctance to Accept Amendments

As discussed earlier, committees in the 2000-2010 parliamentary sessions were notable for the very low success rate of opposition amendments, with a significant fall from the success rates identified in Griffith's study. Given the much larger number of successful non government amendments in the Griffith study, it is assumed that simple drafting amendments were more likely to be accepted by the minister in these committees. It is difficult to say whether these are completely new changes as there is no anecdotal evidence within Griffith's work, other than that drawn from bill committee transcripts themselves. However, it indicates a possible alteration in the attitude of government ministers, with a much lower tendency to accept amendments from members of bill committee. This assumption is supported by comments from long serving Members of the

³⁷¹ Backbench Opposition MP, 3 November 2010, Interview with author.

³⁷² S.A.Walkland, 'Government Legislation in the House of Commons', in S.A.Walkland (Ed.), *The House of Commons in the Twentieth Century*, Oxford: Clarendon Press, 1979, p. 273.

³⁷³ P Norton, 'The Organisation of Parliamentary Parties', in S A Walkland (ed.), *The House of Commons in the Twentieth Century: Essays by Members of the Study of Parliament Group*, Oxford: Clarendon Press, 1979, p. 17.

³⁷⁴ Former Whip, 25 June 2010, Interview with author.

³⁷⁵ See for example J Garrett, *Westminster: Does Parliament Work?*, London: Victor Gollancz Ltd, 1992, p. 50.

³⁷⁶ Former Whip, 25 June 2010, Interview with author.

House. Humfrey Malins for example has spoken of a 'tendency for years now' for governments not to accept amendments from opposition MPs which leads to 'wasted' hours in committee:

"Yet there has been a tendency for years now for Governments simply not to accept an argument or an amendment. Why? Are they fearful of doing so? Are they told by their civil servants that they cannot accept any amendments? How many hours of Committee time have been wasted over the past few years with arguments being put forward in the certain knowledge that the Government will not accept them, even if they are good arguments? ... So many of the people who I think are pulling the strings behind Government Ministers are saying, "No Minister, you cannot accept this." "Why not? It seems reasonable." "Because we say so."³⁷⁷

MPs have also highlighted a growing unwillingness of ministers to accept even very minor amendments as they seek to 'drive their bill through'³⁷⁸ committee as quickly and easily as possible. This extreme ministerial reluctance to accept amendments was demonstrated during the consideration of the Planning and Compulsory Purchase Bill in the 2002-03 session. The government minister refused to accept two drafting amendments moved by the opposition designed to correct spelling mistakes in the Bill on the grounds that he did 'not have confidence that there [were] only two errors' and would rather 'go through the Bill to find all the typos, so that we can clean them up in one fell swoop'³⁷⁹ after the committee stage. Despite being pressed by the committee members, the Minister refused to accept the amendments. The changes were eventually made, but via a series of government amendments when the bill was recommitted to bill committee³⁸⁰, something one Opposition MP described as 'childish' and 'a bit of a game'³⁸¹.

Whether this reluctance is due to pressure on ministers from within government or simply a desire to be seen to be stoical and self-efficient is not clear. The Cabinet Office's guide to legislation claims that a minister 'must not make any commitments ... without having first collectively agreed these'³⁸². It later details the clearance which is required in order to accept amendments in committee:

³⁷⁷ H Malins, *HC Debates*, 8 March 2010, col. 100.

³⁷⁸ Opposition MP, 24 November 2010, Interview with author.

³⁷⁹ T McNulty, *8th Sitting, Planning and Compulsory Purchase Bill Committee*, 21 January 2003, col 9.

³⁸⁰ See *HC Debates*, 10 June 2003, col. 565.

³⁸¹ Opposition MP, 22 October 2010, Interview with author.

³⁸² *Guide to Making Legislation*, London: Cabinet Office, June 2012, p. 186, accessed online, http://interim.cabinetoffice.gov.uk/making-legislation-guide/commons_committee_stage.aspx, 2 October 2012.

"Ministers must not make commitments to bring forward amendments or to accept non government amendments without clearance from PBL Committee, and from the relevant policy Committee of Cabinet if the amendment would effect a change in policy." ³⁸³

With clearance required from both the Legislation Committee and the relevant Cabinet Committee the acceptance of a non government amendment in bill committees is no easy task, even if the minister has a favourable attitude towards it. Ministers appear equally wary of accepting amendments, one former minister describing it as the 'ultimate sign of weakness'³⁸⁴. He implied that ministers would lose face amongst their ministerial colleagues and departmental officials should they make concessions; something that 'no government minister is going to want sitting over them'³⁸⁵. Others describe the tendency to resist amendments as being the result of their 'ownership' of the bill. In the words of one minister 'it's my bill and I want to amend [it] if it needs amending'³⁸⁶. The ministerial, departmental and governmental attitude to non government amendments is thus largely one of enduring stoicism.

The particularly strong levels of resistance found may again be a response to the period under study. The governments spanning the sessions were those in which very few junior ministers had experienced any time in Parliament as an Opposition frontbencher. It is junior ministers who are usually handed the responsibility of guiding a bill through committee and thus, for the most part, ministers in bill committees between 2000 and 2010 had no experience of being a shadow minister in committee; they had never systematically scrutinised a government bill themselves. This has perhaps shaped their attitude to bill committees and the stance taken by them towards opposition amendments. One current minister noted that it is 'enormously difficult ... [to take a bill through committee] ... if you've not been a shadow minister ... it is difficult simply because you don't have the empathy and the understanding'³⁸⁷. This would not have been as evident during the Griffith sample which spanned the periods of the Wilson and Heath Governments; a period in which there was a greater likelihood of ministers having prior experience of serving on the opposition frontbench in bill committees.

³⁸³ *Guide to Making Legislation*, London: Cabinet Office, June 2012, p. 186, accessed online, http://interim.cabinetoffice.gov.uk/making-legislation-guide/commons_committee_stage.aspx, 2 October 2012.

³⁸⁴ Former Government Minister, 15 December 2010, Interview with author.

³⁸⁵ Government Minister, 5 September 2011, Interview with author.

³⁸⁶ Government Minister, 3 March 2010, Interview with author.

³⁸⁷ Government Minister, 5 September 2011, Interview with author.

ii) *Alternative Means of Constraint*

Finally there is a recognition among MPs that formal amendments are not always the most effective means through which to constrain the government, particularly given the levels of party discipline discussed above. Several MPs interviewed intimated that bill committees were just one part of a longer process if one wished to make changes to a government bill. In particular, the informal commitments and undertakings made by ministers in committee were viewed as equally – if not more – valuable than any formal acceptance of amendments. Discussions with ministers in the period immediately following committee stage – prior to report stage – were considered to be crucial in exerting extra pressure on the government in relation to these commitments. This will be discussed further in the following chapter.

Conclusion

Analysis of the formal amendments made to government bills in bill committees is the obvious starting point when considering the level of viscosity being exerted. A formal amendment is the clearest means by which a bill can be subject to change by a committee. Evidence from the 2000-2010 sessions supports the hypothesis that constraint exerted during committee stage is minimal with little impact on legislation. Although one in five government bills leave committee with at least one non government amendment having been made, the vast majority of these make only very minor, drafting changes to legislation. Although such changes are still important and can often clarify sections of government legislation, it is arguably only a very minor constraint. Where substantive changes have been made to government legislation such as during the committee consideration of the Hunting Bill in the 2002-03 session, they demonstrate a very high viscosity. However, such occasions are sporadic, hindered by what appears to be a growing ministerial reluctance to accept formal amendments. On a formal level at least, bill committees in the twenty first century appear to be overwhelmingly compliant.

6. Measuring the Viscosity of Bill Committees: Milder Influences

Do Committees Make a Difference?

An examination of the formal changes being made to government bills in committee suggests that viscosity is low. MPs are unable to constrain the government to any great degree through the formal mechanisms available to them. Whilst consideration of these formal mechanisms is necessary when examining the impact of bill committees on government legislation, it is not sufficient to understand the viscosity of the process. Indeed, it paints only a partial picture of the work and scrutiny being undertaken. Formal amendments are not the only means through which a bill committee can influence the content of a government bill. Rather, they are able to constrain the executive by additional, less visible means, something which Blondel described as the 'milder influence'³⁸⁸ of legislatures. This includes the undertakings made by ministers during committee stage itself and the incorporation of committee concerns into government amendments at the report stage of the bill or during scrutiny in the House of Lords. A thorough examination of these additional indicators of viscosity will produce a more accurate picture of the levels of constraint being exerted by – and through – committees.

Defining the Less Visible Indicators of Viscosity

When questioned on the frequency of successful non government amendments in bill committees, MPs have stressed their frustrations at the weight given to the frequency of successful amendments in committee. As one noted:

"I have to say I slightly lose patience with some of these Public Whip people and TheyWorkForYou and what have you. That misses the point, a good part of the time, of what is actually going on."³⁸⁹

They see little value in counting the number of amendments made to bills, implying that there is much more to success or failure in committee than simply the number of amendments accepted by the government minister. In particular, they stress that the response of the government minister to amendments is often 'more important'³⁹⁰ than the

³⁸⁸ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 79.

³⁸⁹ Government Backbench MP, 3 March 2010, Interview with author.

³⁹⁰ Shadow Minister, 4 April 2010, Interview with author.

outcome of an amendment in committee. This was also noted by Griffith who described how ministers would often give an oral response to an amendment moved in committee which amounts 'to an undertaking that something will be done substantially to satisfy the mover who will then withdraw'³⁹¹. Although this form of legislative output is more subtle and therefore less tangible, it is crucial to measure if one is to appreciate the influence exerted by bill committees on government legislation and therefore, their true viscosity. The undertakings given by ministers in committee can be summarised in three distinct categories: changes agreed to by the Minister but made elsewhere (including in the guidelines and regulations for the implementation of the bill)³⁹², commitments to reconsider an amendment or to 'think again' and commitments to table a government amendment during the report stage of the bill, on the floor of the House. These are referred to by the Cabinet Office, departmental officials and civil servants as agreements to 'accept in principle' or to 'agree to consider'³⁹³.

Beyond committee stage itself, the importance of ministerial undertakings can also be identified in the incorporation of committee concerns into government amendments moved at a later stage. Although this may happen at any later stage of the legislative process – report stage in the Commons or once a bill has moved to the House of Lords – analysis here will be limited to those concessions made during the report stage of bills in the Commons. It may be that a minister has complied with an earlier commitment to table a government amendment which addresses committee concerns or that having reconsidered and reflected on an amendment, it is now viewed as desirable. Alternatively, it may simply be that government amendments are tabled on issues which were discussed in committee, but on which the minister made no such undertaking.

It is argued here that these milder influences are equally as important as the formal methods of constraint through successful opposition or backbench amendments. Although there will be no formal record of a modification being made on the face of the bill as it leaves committee, the committee has still prompted the government to take action that it otherwise may not have taken. It has made the passage of government legislation more difficult than it would otherwise have been and pushed the Government to consider

³⁹¹ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 120.

³⁹² This category also includes occasions where the Government Minister signs an opposition amendment, where similar amendments are made by the Government and other committee members and occasions where the Government Minister agrees to introduce an amendment at a later stage of the committee proceedings.

³⁹³ *Guide to Making Legislation*, London: Cabinet Office, June 2012, p. 199.

and possibly make additional changes. Constraint is clearly being exerted, it is simply in a less tangible form.

Ministerial Undertakings in Committee

Given the value of ministerial undertakings to committee members, one would expect the number of undertakings to be greater than the number of non government amendments accepted formally by the government. As *Table 14* illustrates, the number of amendments receiving some form of undertaking from the government minister is far greater than the number of amendments which have been passed formally in bill committees over the period in question. Whilst just one per cent of all substantive³⁹⁴ non government amendments were passed in bill committees over the 2000-2010 period, 16 per cent saw a commitment from the minister to table an amendment at report stage or a commitment to reflect on or reconsider an amendment³⁹⁵. There is thus a considerable difference between the formal and milder influences exerted by bill committees. This suggests that these milder constraints are worthy of further attention.

Table 14. Ministerial Undertakings in Bill Committees 2000-2010

Ministerial Undertaking	Frequency*		
	<i>Total</i>	<i>Average per session</i>	<i>Average per bill</i>
Change made through other means	191	19	1
Commitment to Reconsider	642	64	5
Report Stage Commitment	126	13	1

NB: Figures include only the number of undertakings given by the minister, not the number of amendments concerned. The actual number of amendments would be higher than this.

*All figures are rounded

i) Changes Made through other Means

Around 3 per cent of all substantive amendments resulted in some form of change on the part of the government to other aspects of the bill's implementation. As *Table 15* demonstrates, this category covers a variety of situations. Often it includes a commitment to make changes to the guidance or regulations accompanying a bill. For example, Charles Clarke (Labour) agreed to include further details on the issuing of penalty notices in the

³⁹⁴ All amendments which are not described by the MP moving the amendment as being a 'probing' amendment are coded as substantive amendments.

³⁹⁵ 1.2% of all substantive non government amendments were passed formally in bill committees (88 amendments out of a total of 7322. 1188 amendments received a commitment from the minister either to table a corresponding amendment at report stage or to reconsider an amendment.

guidance accompanying the Criminal Justice and Police Bill, a measure that the Shadow Minister described as 'something of a triumph'³⁹⁶.

Table 15. Changes Made to Government Bills through Other Means

Type of Change	Number of Amendments
Government response to committee	104
Regulations or guidance	125
Opposition tabling same amendment as Government	57
Government signing opposition amendment	22
Change made in other legislation	3
Concession on Government amendment	1
Other	6

NB: Includes the total number of amendments allocated these codes. Figures will be higher than the number of undertakings given.

However, there are three other ways in which a non government amendment can be said to have directly prompted a formal government amendment in a bill committee itself and which are coded under the 'change made' category:

- a. The Government minister may sign an amendment tabled by an opposition or backbench MP before the start of the bill committee. This amendment will then be listed on the marshalled list of amendments as a government amendment and the Minister will move the amendment in committee. This can be seen on twenty-two occasions across the sessions studied. However, it only becomes apparent that the amendment actually began as a non government amendment if acknowledged by the Minister in question or by the MP who had initially tabled the amendment. For example, the Government signed an Opposition amendment tabled to the Asylum and Immigration (Treatment of Claimants) Bill (2003-04 session) regarding tribunal reviews. The amendment was grouped with a series of other related Government amendments and passed formally by the committee. This was only apparent because the MP who had originally tabled the amendment, spoke to it, saying that "amendment 42 was my amendment, and the Government have adopted it, with the Minister's signature appearing above mine"³⁹⁷. The amendment has clearly been prompted by an opposition or government

³⁹⁶See for example O Heald, *2nd Sitting, Criminal Justice and Police Bill Committee*, 6 February 2001, (col not available).

³⁹⁷ H Malins, *7th Sitting, Asylum and Immigration (Treatment of Claimants etc) Bill Committee*, 20 January 2004, col. 233.

backbench MP but would not be recorded as such in a simple count of amendments passed in the committee. Indeed, on this particular amendment, the Opposition MP said that it “shows the merits of an Opposition in Committee”³⁹⁸.

- b. The Government may table an amendment which is identical to a non government amendment which had already been tabled. The coding of such amendments is again reliant upon the Government Minister acknowledging the fact that they have tabled an amendment in response to an earlier non government amendment. This could be seen in the Armed Forces (Pensions and Consideration) Bill committee (2003-04 session) where Government Minister David Lammy introduced an amendment regarding appeals jurisdictions, noting that he was “grateful to the hon. Member for Aldershot [an Opposition MP], for his amendment which alerted us to the oversight”. Fifty-seven amendments over the 2000-2010 parliamentary sessions were coded in such a way.
- c. The Government may make a commitment to consider an issue at an early stage in a bill committee’s proceedings and have time to table an amendment for consideration during a later sitting of the committee. For example, during the consideration of the Violent Crime Reduction Bill (2005-06 session) the Government responded to concerns raised by Opposition MPs at the start of the committee and at second reading regarding the use of imitation firearms for theatrical demonstrations and historical re-enactments. Government Minister Hazel Blears tabled two amendments which were moved in the seventh sitting of the committee to insert a defence into the bill for the use of imitation firearms for such purposes. Here the Government has clearly responded to the amendments and concerns of committee members, but the amendment itself would still be recorded formally as a Government amendment. Over 100 amendments were coded in this way.

ii) Commitments to Table an Amendment at Report Stage

The second category of milder constraint – commitments from the government to table an amendment at report stage – are perhaps the most important, particularly from the point of view of the committee members themselves, who are often proud to have received such a commitment, regardless of whether the amendment actually comes to fruition. When the

³⁹⁸ H Malins, *7th Sitting, Asylum and Immigration (Treatment of Claimants etc) Bill Committee*, 20 January 2004, col. 233.

Minister agreed to table an amendment to make an explicit reference to NHS Trusts in the Local Government and Public Involvement in Health Bill, the MP who moved the amendment in committee described it as ‘a significant concession’, adding that ‘people will feel envious that today, the official Opposition and the Liberal Democrats have secured from the Minister an important undertaking’³⁹⁹. These commitments are not as frequent as other forms of undertaking, but on average, one such commitment is made during the committee stage of every government bill.

The majority, though not all, of these commitments from the Minister are adhered to at report stage.⁴⁰⁰ Generally, Government Ministers give credit to the MPs who first raised the issue in committee. For example, so many amendments were prompted by the work of Shadow Minister John Bercow during the Vehicles (Crime) Bill Committee (2000-01 session) that the Government Minister, when moving a series of amendments at report to address the offences covered by the bill, described them as the ‘Buckingham amendments’ in reference to the Conservative MP’s constituency⁴⁰¹. MPs themselves see great value in this method of amendment. Indeed, one described such approaches by Government Ministers as showing ‘the House of Commons at its best’⁴⁰².

iii) Commitments to Reconsider an Amendment

It is agreements from Government Ministers to reconsider amendments which forms the largest type of milder constraint observed in bill committees, accounting for 674 amendments over the sessions in question. As previously noted, ministers are very reluctant to accept amendments formally in committee, with some describing it as the “ultimate sign of weakness”⁴⁰³. However, Opposition Members refer to a “long and distinguished tradition of Ministers listening carefully to what is discussed in [bill committees] and offering to re-examine certain points”⁴⁰⁴. Such agreements to reconsider bring the possibility of a Government amendment at the report stage of the bill, but are no guarantee of such an action. Commitments to reconsider were made by Ministers on 642 amendments between 2000 and 2010. For example, an undertaking was given to reconsider the issue of unconditional agreements between ministers and other bodies in the Natural Environment and Rural Communities Bill (2005-06 session). Here, the

³⁹⁹ T Brake, *11th Sitting, Local Government and Public Involvement in Health Bill Committee*, 22 February 2007, col. 356.

⁴⁰⁰ 58 per cent of these amendments were made at report stage.

⁴⁰¹ K Hill, *HC Debates*, 30 January 2001, col. 214.

⁴⁰² H Malins, *HC Debates*, 14 November 2005, col. 788.

⁴⁰³ Former Government Minister, 15 December 2010, Interview with author.

⁴⁰⁴ J Gray [to A Michael], *17th Sitting, Hunting Bill Committee*, 4 February 2003, col. 799.

minister noted that he was 'minded to discuss further with colleagues whether we have the balance right in the provisions,' and that he would 'come back to the House with a clear line on it on report'.⁴⁰⁵

An agreement to reconsider is simply an undertaking to consider an issue further. Often no further reference will be made to the issue. This does not mean that these agreements are not a form of constraint. It constitutes an important concession that a Government Minister can make to a committee and is particularly important on occasions where ministers come under pressure. As one Minister conceded 'there will certainly be areas where you've got tucked up your sleeve concessions that you could give ... that will get you out of a tricky situation later on'⁴⁰⁶. It can thus be something of a tactical manoeuvre. A commitment to reconsider can be a sign that the Minister wishes to discuss a matter with colleagues and officials, or that they have found themselves under considerable pressure in the committee. Both could be viewed as a committee exerting constraint.

Ministerial undertakings in bill committees are thus much valued by committee members, who seek some reassurance that their issues will be reflected upon beyond the committee room itself. Although minor changes to the guidance and regulations accompanying bills are by far the most common form of undertaking, a significant number of firm commitments to table amendments at report stage are also made. A high proportion of these are adhered to and – as demonstrated – these undertakings can result in whole sections of government bills being rewritten. In such cases, a high degree of viscosity is clearly being exerted by the committee; prompting the government to contemplate further changes to their own bills.

The Importance of Report Stage for Legislative Viscosity

Committee stage itself is not the only place in which viscosity can be observed. It is necessary to consider the number of amendments introduced by the government at the report stage of bills in response to the undertakings given in committee and the use of this stage of the legislative process for committee members to exacerbate the constraints which were imposed on the government during committee stage.

⁴⁰⁵ J Knight, *9th Sitting, Natural Environment and Rural Communities Bill Committee*, 5 July 2005, col. 295.

⁴⁰⁶ Former Government Minister, 26 June 2010, Interview with author.

i) *The Period between Committee and Report Stage*

Front and backbench committee members highlight the importance of the period following committee stage for changes to be made to government bills. Most see the bill committee as just one stage in a very long process if one wishes to make an amendment to a government bill. They cite discussions with ministers outside committee, particularly between committee stage and report stage, as being important in increasing the pressure or momentum for change, stating that whilst committee stage may allow an MP to 'mark out [the] territory'⁴⁰⁷ that they are concerned about, it is necessary to continue to build on this as a bill moves towards report. One opposition MP admitted that being appointed to a bill committee gives you 'fantastic access' to ministers who are 'highly approachable'⁴⁰⁸. He added that 'a lot of good work can be done ... in meetings with the minister'⁴⁰⁹. A government backbencher described this as the 'forgotten art' of parliamentary scrutiny, referring to an occasion where he withdrew an amendment following a ministerial undertaking as 'exemplary' behaviour which ensured a 'genuine dialogue'⁴¹⁰ between himself and the government minister between committee stage and report.

"I think, sort of, the forgotten art is that simply whacking down an amendment and threatening to take it to a division and then everyone getting very upset and then partisan lines being drawn probably means that you are very unlikely to get the outcome that you want from the amendment. Whereas if you do it, I think, I modestly say I thought I did it on that occasion was fairly exemplary as far as actually getting what you want out of a bill and in a sense legislating as a backbencher. That actually you haven't upset your own frontbench, you haven't divided the committee unnecessarily, you've got the support of the other side and your frontbench knows that, but you haven't done anything rash as a result and there's a genuine dialogue emerges as a result of that."⁴¹¹

This is corroborated by another government backbencher who – referring to the same bill committee – noted that by not pursuing amendments in committee and engaging in private discussions with the minister before report stage a backbencher can 'eventually mould and adapt and change policy'⁴¹².

Ministers themselves also appreciate the importance of continuing to examine suggestions or concerns expressed in committee. As one former minister pointed out, in preparation for report stage 'you would be considering whether to reflect on amendments and

⁴⁰⁷ Opposition MP, 4 April 2010, Interview with author.

⁴⁰⁸ Opposition MP, 13 October 2010, Interview with author.

⁴⁰⁹ *ibid.*

⁴¹⁰ Government Backbench MP, 3 March 2010, Interview with author.

⁴¹¹ Government Backbench MP, 3 March 2010, Interview with author.

⁴¹² Government Backbench MP, 7 April 2010, Interview with author.

whether to table a response to your commitments'⁴¹³. He adds that 'having given a commitment [in bill committee] you are bound to deliver on it. You can't just ignore it'⁴¹⁴. Departmental officials are also encouraged to continually monitor ministerial undertakings made in committee to ensure that action is taken on them as a priority before report:

"The Bill team should keep a list, day by day, of commitments made by Ministers in Committee: e.g. to move an amendment on Report to meet some Member's point, or to consider further some argument which has been put forward. Action should be set in train immediately on these points ... If a Minister promises to consider a matter, the promise will be noted by the Clerk and amendments on the subject are likely to be selected on Report ... When such promises are made, the necessary work should begin at once and not be left until the end of Committee stage.⁴¹⁵

They note that they 'do tend to meet with backbenchers'⁴¹⁶ and are usually 'happy to sit down with [other committee members] if it's a significant [amendment] that needs some explaining or exploring'⁴¹⁷ or to 'try to find out what they want to do to see if I can actually help them out'⁴¹⁸. Even the clerks take note of ministerial undertakings, in order to advise the Speaker on amendment selection at report stage. If a minister has made an undertaking to come back at report with a government amendment, but fails to do so, amendments from committee members may be selected "with very good reason"⁴¹⁹ for further discussion at report. This period immediately prior to report is thus crucial for committee members to try to maximise the impact of the amendments discussed in committee and for ministers to re-examine those areas of the bill to which they gave a firm undertaking in committee.

There is ample evidence from the bills studied to suggest that this intervening stage between bill committee and report is a crucial time in which to force concessions from the government on issues and amendments raised in committee. Appendix 11 lists ten notable occasions in which meetings held between committee members and ministers have resulted in the passage of government amendments at report stage to address issues raised in committee. Following the committee stage of the Local Transport [HL] Bill in the 2008-09 session for example meetings were held between the minister, MPs, trade unions, bus operators and local authorities, something Graham Stringer MP (Labour) described as

⁴¹³ Opposition frontbench MP, 18 October 2011, Interview with author.

⁴¹⁴ Opposition frontbench MP, 18 October 2011, Interview with author.

⁴¹⁵ *Guide to Making Legislation*, London: Cabinet Office, June 2012, p.202.

⁴¹⁶ Former Government Minister, 17 August 2010, Interview with author.

⁴¹⁷ Government Minister, 3 March 2010, Interview with author.

⁴¹⁸ Government Minister, 5 September 2011, Interview with author.

⁴¹⁹ Parliamentary Clerk, 28 November 2012, Interview with author.

going 'above and beyond the call of duty'⁴²⁰. When interviewed one Minister referred to discussions he had held with Alan Whitehead (Labour) during the committee stage of the Energy Bill regarding bringing non financial benefits into the social price support scheme. He admitted that 'in the end we took legal advice on his amendment and accepted that our language maybe should be a little bit clearer and that we would be bringing an amendment in at report stage'⁴²¹.

This is not to say that progress will always be made as a result of discussions between committee members and the minister. One MP stressed his disappointment that correspondence between himself and the then Minister of State at the Department of Health Rosie Winterton following the committee stage of the Mental Health [HL] Bill regarding the definition of a carer did not result in any changes.⁴²²

The period of time between committee and report stage is thus of great importance in terms of the policy impact of a bill committee on a government bill. Ministers certainly feel under pressure to give attention to those issues upon which they gave undertakings in committee; they are not simply a means by which to get out of a committee unscathed, with no substantial amendments being made. One minister believed that MPs may have 'suddenly woken up to the fact'⁴²³ that big issues in a bill may only become apparent during committee but that pressure can then be applied between the end of committee stage and report. The bill committee arena itself therefore is not the most effective place for MPs to make changes to legislation. It is just one stage in a long policy influencing process. Discussions with ministers outside the committee become particularly important and can increase the pressure or momentum for change. The period following committee stage is a crucial time in which to encourage concessions on issues and amendments raised in committee.

ii) Government Amendments at Report Prompted by Bill Committee

The period between committee stage and report stage has therefore been identified by all participants as being of great importance for changes to government bills and thus to the viscosity exerted by bill committees. Committee members are likely to continue to lobby the relevant government minister on issues raised in committee. It is important then to

⁴²⁰ G Stringer, *HC Debates*, 27 October 2008, col. 594.

⁴²¹ Government Minister, 3 March 2010, Interview with author.

⁴²² D Kidney, *HC Debates*, 18 June 2007, col. 1106-7

⁴²³ Government Whip, 25 June 2010, Interview with author.

consider the government amendments introduced at report stage and the extent to which these have been prompted by discussions or amendments made in committee.

a) Commitments to Table Amendments at Report

A total of 126 separate undertakings to table a government amendment at report stage were made by ministers over the period under study, averaging one such undertaking for each bill within the sample. Fifty-eight per cent of these undertakings were acted upon at report stage, through the introduction of at least one government amendment or new clause. More often the ministerial responses involved the tabling of a series of new clauses or amendments. Indeed, at least 75 new clauses, one new schedule and 164 amendments were made to government bills as a direct result of the undertakings made during committee⁴²⁴. These instances have only been coded as such due to an explicit acknowledgement that this is due to committee discussions by the minister moving the amendment. As such, in all of these cases the influence of the bill committee is without question; on 73 occasions bill committees have prompted the government to make at least one change to a bill that they may otherwise not have made. A good example of such a change is the modification made by the Government during the report stage of the Adoption Bill regarding birth mothers' access to their children's records. This built on a debate introduced by the Opposition in committee. The Shadow Minister at the time noted that the change wouldn't have happened 'had it not been articulated in such a constructive way by us in committee'⁴²⁵.

This figure however is something of an underestimate of the impact of committee stage. It is by no means uncommon for a minister to resist an amendment in committee, giving no undertaking whatsoever to reconsider the issue, only to introduce similar government amendments at report. One would assume that they had been swayed by the committee debate or that upon further reflection they felt such a change to be necessary. If these instances are taken into account, one finds that government ministers explicitly referred to 1331 amendments made to their own legislation at report stage as being prompted by discussions in bill committee⁴²⁶, an average of nearly ten amendments for every government bill.

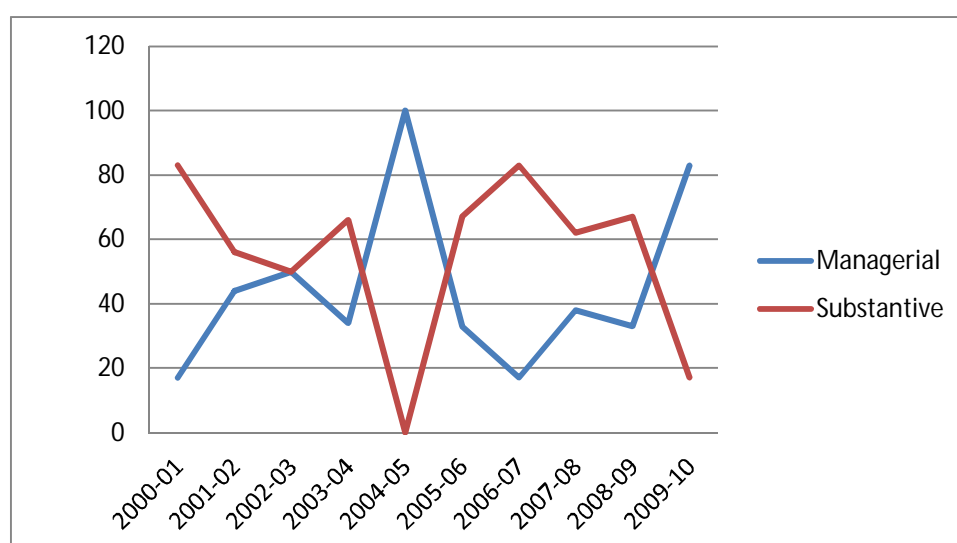
⁴²⁴ Only explicit references to commitments are included in the count. Actual figure is presumably higher.

⁴²⁵ Opposition MP, 4 April 2010, Interview with author.

⁴²⁶ Given the lack of time often available at report stage and the number of government amendments therefore passed formally without debate, the actual number of amendments prompted by committee discussions is likely to be even greater still.

It appears without question then that bill committees are having a large impact on amendments made at the report stage of government bills. They are clearly making a difference to government legislation, but it is unclear precisely what difference this is. An analysis of the occasions where a firm commitment during bill committee has led to government amendments at report stage shows the proportion of amendments which are making real, substantive changes to the legislation in question.

Figure 3. Government Amendments Moved at Report Following an Undertaking to do so in Committee



NB: An amendment coded as substantive may also involve several consequential amendments which would have been coded as managerial. These are not included here as the overall change/undertaking was substantive.

Several small changes were made in this way at report, such as the replacement of the word 'colony' with 'overseas territory' during the Adoption and Children Bill Committee of the 2001-02 session⁴²⁷. However, of the 73 separate issues upon which government amendments were tabled at report stage, the majority (45) were coded as substantive. For instance, a new clause tabled by John Bercow during the Vehicles (Crime) Bill Committee in the 2000-01 session which would create an additional criminal offence of knowingly making a false application for entry into the register of motor salvage dealers was described by the minister as having 'a real point and substance'⁴²⁸. This was introduced via a government amendment at report stage, once the definition of 'a false application' had been clarified from the initial opposition amendment.

⁴²⁷ *HC Debates*, 20 May 2002, col. 33.

⁴²⁸ C Clarke, *5th Sitting, Vehicles (Crime) Bill Standing Committee*, 16 January 2001.

Figure 3 illustrates the substantiveness of these amendments by parliamentary session. With the exception of the 2004-05 and 2009-10 sessions, a greater proportion of commitments made by ministers and then acted upon at report involve substantive changes to legislation. The 2000-01 and the 2006-07 sessions in particular saw a very high proportion of substantive changes (83 per cent) being introduced in this way at report.

b) Undertakings to Reconsider Amendments before Report Stage

It has already been noted that ministerial undertakings to reconsider amendments moved in committee bring no guarantee that any change will be made. Rather, they are simply a sign that the government minister will give further thought to an issue. However, in the case of 192 of the 674 separate undertakings made by ministers in committee, a corresponding government amendment(s) has been moved and passed at report stage. This figure is highly significant, accounting for 28 per cent of all undertakings⁴²⁹. Over a quarter of these undertakings then resulted in substantive changes being made to government bills.

Such a change could be seen during the passage of the Natural Environment and Rural Communities Bill. Having given an undertaking to reflect further on the power of ministers and designated bodies to enter into agreements regarding the delegation of functions, the minister made a series of changes in the weeks before the report stage of the Bill, the minister himself noting that 'over the summer, we have reviewed carefully the clauses ... and have concluded that some further limitation on those powers would be appropriate'⁴³⁰. Eight clauses of the bill were replaced with new clauses and a further 14 government amendments were needed to make consequential changes in other areas of the bill⁴³¹. The Opposition noted the extensive changes being introduced as a result of their amendments in committee, James Paice stating that 'it is not often that the Opposition manage to persuade the Government to tear up a whole chapter of a Bill and rewrite it'⁴³². It was described as reflecting 'the constructive way in which the Government and Opposition parties have engaged on the Bill'⁴³³ and is a prime example of a bill committee exerting constraint, but of a form that is only visible at a later stage of the legislative process.

⁴²⁹ Of the 653 separate undertakings by ministers to consider issues arising from committee stage, 192 of these saw a corresponding amendment(s) tabled at report.

⁴³⁰ J Knight, *HC Debates*, 11 October 2005, col. 180.

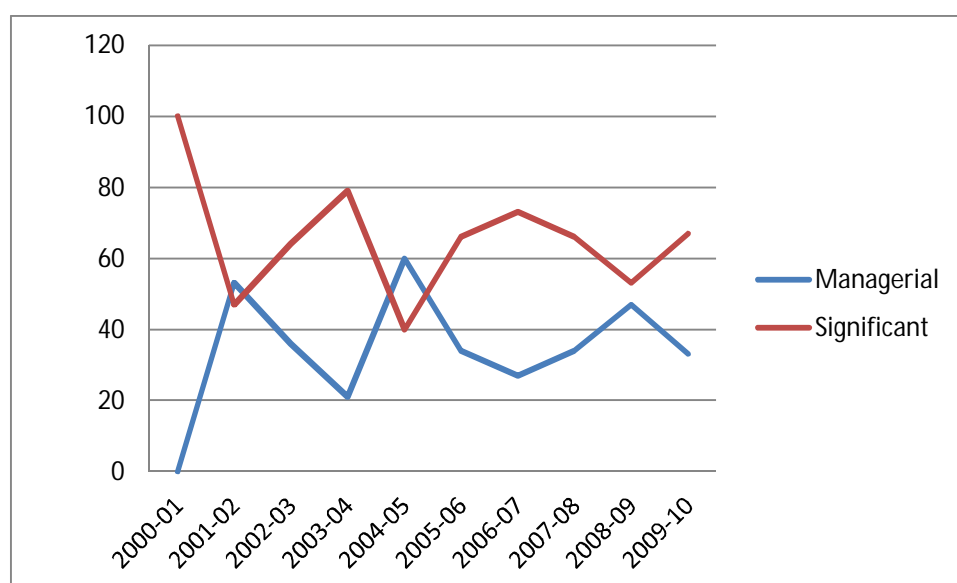
⁴³¹ See *HC Debates*, 11 October 2005, col. 180.

⁴³² J Paice, *HC Debates*, 11 October 2005, col. 181.

⁴³³ *ibid.*

If one considers the substantiveness of these changes, 65 per cent of the undertakings involved a substantial amendment being moved at report. Thus, nearly two thirds of these cases resulted in a significant change being made to a government bill. *Figure 4* shows a breakdown of these successful amendments by parliamentary session.

Figure 4. Substantiveness of Commitments to Reconsider which led to Government Amendments at Report



NB: Percentages are based on the number of undertakings/issues on which action was taken and not the actual number of individual amendments moved

In a similar fashion to the firm commitments made by ministers to table amendments at report, it is found that the majority of undertakings to reconsider amendments which are then acted upon at report stage involve the moving of a significant amendment (See *Figure 4*). That is, the majority of ministerial undertakings of this nature which result in a change are making extensive changes to government bills.

c) Other Amendments at the Report Stage of Bills

These are not the only two means by which the constraining impact of bill committees can be identified at report stage. Amendments may be moved by the government which have been discussed in committee but where no undertaking was made and committee members may move amendments at report, building on committee discussions which are then accepted by the government. In both cases the origin of the amendment is in the bill committee.

It is very difficult to accurately gauge the proportion of government amendments which relate to amendments previously discussed in committee but on which no undertaking was given. However, a conservative estimate⁴³⁴ suggests that 839 amendments of this nature have been successful at report. Although the majority (87 per cent) of these amendments are coded as managerial and are therefore making only minor changes to the bills in question, it also includes 108 substantial amendments. These substantial amendments cover issues such as the inclusion of GP contracts in the Health and Social Care (Community Health and Standards) Bill (2002-03)⁴³⁵ and the extension of the power to search students for weapons to staff at further education colleges at the report stage of the Violent Crime Reduction Bill (2005-06)⁴³⁶. A full breakdown of these amendments by session can be seen in Appendix 12.

It is also a difficult task to identify occasions where committee members have met with government ministers to discuss amendments following committee stage. It relies on MPs referring to such meetings when they move the relevant amendment at report. Robert Flello (Labour) for instance moved New Clause 8 in the Crime and Security Bill Committee (2009-10) to include a clear statement that domestic violence may include threats against children. Although the minister did not accept the amendment, he agreed to work with him to ensure the issue was addressed⁴³⁷. When two redrafted amendments were moved by the MP at report, the minister explained how their meeting following the committee stage had resulted in the redrafted amendments which were then accepted:

“We wanted to change the wording slightly, and I discussed that with my hon. Friend. He listened to what I said, and he has tabled an amendment that reflects his concerns in Committee and we will accept it this evening”.⁴³⁸

Instances such as this are a further example of a bill committee constraining the government and exerting viscosity. The moving of an amendment in committee prompted the minister to meet with the relevant MP and together produce an acceptable wording which was then agreed to at report stage. The time period may have been somewhat

⁴³⁴ This estimate includes only those occasions where an explicit reference is made by the minister or opposition spokesman that suggests that an amendment was discussed in committee and is a response to that discussion.

⁴³⁵ New clause 26 was passed at report stage and said to be a response to committee. See S Burns, *HC Debates*, 8 July 2003, col. 1035.

⁴³⁶ New Clause 9 was tabled to the Violent Crime Reduction Bill (2005-06). See H Blears, *HC Debates*, 14 November 2005, col. 696.

⁴³⁷ D Hanson, *9th Sitting, Crime and Security Bill Committee*, 9 February 2010, col. 302.

⁴³⁸ D Hanson, *HC Debates*, 8 March 2010, col. 105.

protracted but the end result was the same: a change was made to a government bill by the bill committee member. In this case the bill committee had ensured that the police would consider the welfare of children in domestic violence cases. It is difficult to accurately note the frequency of such meetings with government ministers. However, ten amendments have been accepted by the government at report stage following meetings of this kind. They are listed in Appendix 11.

d) Viscosity of Bill Committees Elsewhere

Finally it should be noted that this analysis of the impact of bill committees following committee stage itself has focused only on the report stage of government bills. This is not however, the limit of bill committee constraint. Firstly, an amendment or discussion in bill committee may prompt a government amendment in the House of Lords. During the committee stage of the Savings Gateway Accounts Bill (2009) the minister undertook to reflect on two opposition amendments to ensure that people of working age in receipt of a carer's allowance were not excluded from the scheme⁴³⁹. Whilst this reflection did not result in a government amendment being moved at the report stage of the bill, the minister confirmed at report that he was 'minded to table an amendment for consideration in the other place'⁴⁴⁰. Opposition MP Mark Hoban (Conservative) confirmed that this 'demonstrates the Government's ability to listen to proposals made in committee'⁴⁴¹. Although a thorough analysis of these instances could not be undertaken comprehensively in the time available for the research, ministers have made at least nine explicit undertakings to table amendments in the Lords as a result of committee work (See Appendix 15). For example, during the report stage of the Pensions Bill (2007-08), Mike O'Brien (Labour) proposed 'to suggest an amendment in due course, to be tabled in another place'⁴⁴² to provide assistance in accessing the Pension Protection Fund for people aged under 50 who were terminally ill. This is supported by current research being undertaken by the Constitution Unit which suggests that the Lords 'is more influential than the Commons'⁴⁴³ in terms of successful amendments to government bills. The study finds evidence of 122 occasions from a sample of six bills whereby amendments/issues were pursued across both chambers and cites the Saving Gateway Accounts Bill as a further example of an occasion where amendments proposed by the Conservative

⁴³⁹ I Pearson, *1st Sitting, Savings Gateway Accounts Bill Committee*, 3 February 2009, col. 67.

⁴⁴⁰ I Pearson, *HC Debates*, 25 February 2009, col. 296.

⁴⁴¹ M Hoban, *HC Debates*, 25 February 2009, col. 297.

⁴⁴² M O'Brien, *HC Debates*, 22 April 2008, col. 1237.

⁴⁴³ M Russell *et al.*, 'A Measurable Difference: Assessing the Westminster Parliament's Impact on Government Legislation 2005-2010', *Paper presented at the ECPR Parliaments and Legislatures Conference*, Dublin, 24-27 June 2012, p. 14.

frontbench regarding making key details of the scheme subject to the affirmative resolution procedure were later passed in the Lords. They conclude that ‘amendments that were pursued in both chambers were more likely to succeed than those that were taken up in only one chamber’⁴⁴⁴.

Case Study of Committee Viscosity: NHS Redress [HL] Bill

It is clear that committees are making changes to government legislation other than through formal committee amendments and that the frequency of these milder constraints is much greater. The NHS Redress [HL] Bill from the 2005-06 parliamentary session provides an excellent case study example of the importance of these milder constraints for committee viscosity. The bill was relatively uncontroversial - the minister himself stating that it had ‘received broad support from across the House’⁴⁴⁵ and the committee sat for only three sittings, yet substantial changes were made as a result.

Table 16 summarises the indicators of viscosity from the committee stage of the bill. One would be forgiven on the basis of these findings for thinking that this was an example of an overwhelmingly compliant committee. Of the 21 amendments moved, 5 were successful government amendments. Although 15 non government amendments were discussed in committee, none were accepted by the minister. Therefore, although the bill left the committee in an amended form, all of the amendments emanated from the government.

Table 16. Indicators of Viscosity in NHS Redress [HL] Bill Committee

Total Amendments Moved/Discussed	21
Successful Government Amendments	5
Successful Non Government Amendments	0
Changes Made Elsewhere	1
Undertakings to Reconsider an Amendment	2
Commitments to Table an Amendment at Report	0

A handful of undertakings were however, given by the minister Andy Burnham over the course of the committee. One commitment was made to clarify the guidance accompanying the bill regarding the action to be taken to reduce the risk of errors as part of redress packages⁴⁴⁶ and two undertakings to reconsider amendments were made.

⁴⁴⁴ M Russell *et al.*, ‘A Measurable Difference: Assessing the Westminster Parliament’s Impact on Government Legislation 2005-2010’, *Paper presented at the ECPR Parliaments and Legislatures Conference*, Dublin, 24-27 June 2012, p. 15.

⁴⁴⁵ A Burnham, *1st Sitting, NHS Redress [HL] Bill Committee*, 13 June 2006, col. 3.

⁴⁴⁶ *ibid.*, col. 23.

These involved whether the investigation of NHS cases should lead to the publication of a report which is made available to patients and others⁴⁴⁷ and on the legal advice provisions within the bill⁴⁴⁸.

It was only when the committee stage had formally ended that the true constraints being exerted came to light. The minister had said that he would 'carry on discussions'⁴⁴⁹ with Labour backbencher Siôn Simon regarding the issues on which he had given an undertaking to reflect further and was true to his word. A meeting between the MP, Minister and the charity Action Against Medical Accidents resulted in a new clause being moved by Siôn Simon and accepted by the minister at report stage. The Minister's comments leave no doubt that it was the perseverance of Siôn Simon in the period between committee and report that brought about the change to the bill:

'I thank my hon. Friend the Member for Birmingham, Erdington (Mr. Simon) for the constructive way in which has engaged with me and the Department on the Bill. I thank him for facilitating the meeting that we held with AvMA between the conclusion of the Committee and today's proceedings'⁴⁵⁰.

Furthermore, a series of government amendments were also moved which addressed the issues discussed during the bill committee on which the minister had agreed to reflect and which he believed would produce a 'strengthened'⁴⁵¹ bill. Emphasising that he had 'listened' between committee and report and 'taken on board comments made by hon. Members on both sides of the House'⁴⁵² the Minister moved ten government amendments in response to the undertakings given in committee. As *Table 17* demonstrates, this accounted for all but one of the government amendments moved at report. The amendments were highly significant and included the requirement for the findings of investigations to be published in a report and made available to the person seeking redress and a requirement for an annual report of the cases falling under the scheme and the lessons to be learned from them.

⁴⁴⁷ A Burnham, *1st Sitting, NHS Redress [HL] Bill Committee*, 13 June 2006, col. 26

⁴⁴⁸ A Burnham, *3rd Sitting, NHS Redress [HL] Bill Committee*, 15 June 2006, col. 106.

⁴⁴⁹ *ibid.*, col. 116.

⁴⁵⁰ A Burnham, *HC Debates*, 13 July 2006, col. 1523

⁴⁵¹ *ibid.*, col. 1524.

⁴⁵² *ibid.*

Table 17. Indicators of Viscosity during Report Stage of the NHS Redress [HL] Bill

Successful Government Amendments	11
Successful Non Government Amendments	1
Government amendments moved in response to committee	10

The impact of the committee on the bill was thus considerable. It was clear from the atmosphere in the chamber that both opposition MPs and government backbenchers felt that they had been able to make a real difference. Shadow Spokesman Sandra Gidley (Liberal Democrat) claimed to be “delighted⁴⁵³” by the changes made, adding that “it is the first time that has happened to me in my six years in this place”⁴⁵⁴ whilst Siôn Simon noted that the bill was now ‘immeasurably better’⁴⁵⁵ as a result of the amendments. The Minister himself also won plaudits from backbench MPs, with Siôn Simon describing the changes as a “masterclass in a listening government”⁴⁵⁶. At third reading, one MP (Independent) commented on the progress made by the committee, describing the amendments as ‘absolutely brilliant’:

“My limited experience of Standing Committees has been uniformly depressing and frustrating. When I served on a Committee a long time ago, a senior Member whispered in my ear that he had tabled 600 amendments and not one was accepted. Yet an amendment to the Bill has been accepted. That is absolutely brilliant and I commend the Minister for that. He will be known as a listening Minister, and I hope that that will not be perceived as a sign of weakness and that he will continue to listen and take points⁴⁵⁷.

There can be no doubt that the bill committee was able to effectively constrain the government during its scrutiny of the bill. Whilst the observable constraints in committee were only very minor, meetings with the minister and a committee member before the report stage facilitated the passage of a series of important amendments. The NHS Redress [HL] Bill Committee thus demonstrated a high degree of viscosity. It is a further example of a less compliant committee. This example is by no means an isolated incident of committee impact. Indeed, one could point to a number of other bills in which similar advances were made as a result of committee stage. Other notable examples of bills receiving extensive amendment in this manner include the Vehicles (Crime) Bill (2000-01), Adoption and Children Bill (2001-02), Natural Environment and Rural Communities Bill (2005-06) and the Welfare Reform Bill (2008-09).

⁴⁵³ S Gidley, *HC Debates*, 13 July 2006, col. 1532.

⁴⁵⁴ *ibid.*

⁴⁵⁵ S Simon, *HC Debates*, 13 July 2006, col. 1574.

⁴⁵⁶ *ibid.*

⁴⁵⁷ R Taylor, *HC Debates*, 13 July 2006, col. 1574/5.

Why is Committee Viscosity so much more apparent at Report Stage?

Evidence drawn from the 2000-2010 parliamentary sessions demonstrates the importance of the so called 'milder constraints' of bill committees. The undertakings made by ministers during committees and the use made of the important period between the committee stage and report stage of bills are crucial indicators of viscosity. The report stage of bills in particular is where the fruits of committee labour are most apparent. Three reasons are suggested here as to why committee viscosity is so much more prominent at report stage.

i) Committee members dominate the report stage of bills

Firstly, committee members are more likely to participate in the report stage of bills. Charles Walker (Conservative) noted when interviewed that 'it tends to be the committee members that turn up'.⁴⁵⁸ They will inevitably have a greater knowledge of the – often very technical and complex – issues surrounding a bill following the detailed scrutiny in committee and may well have amendments which they have redrafted and wish to follow up on with the minister. The estimated number of amendments discussed at report stage which have also been moved or discussed in some way in committee stands at an estimated 49 per cent⁴⁵⁹. This figure is not surprising given the tendency already noted for committee members to redraft their amendments in light of the minister's responses in committee and table them again at report.

ii) Even acceptable amendments may require redrafting

Ministers are often willing to accept amendments tabled in committee but are unable to do so as the amendments require some element of redrafting. For instance, amendment 50 tabled to the Police Reform Bill in the 2001-02 parliamentary session was accepted in principle by the government minister but required some redrafting before report⁴⁶⁰. The opposition frontbench and other committee members do not have access to the legal resources available to the government and this can result in poorly drafted amendments. Committee members do have access to some basic drafting resources and advice; the Clerks Office estimates that they draft between one quarter and one third of all non

⁴⁵⁸ Opposition MP, 13 October 2010, Interview with author.

⁴⁵⁹ 4791 out of 9861 amendments at report stage.

⁴⁶⁰ See *5th Sitting, Police Reform (HL) Bill Committee*, 13 June 2002, col. 142.

government amendments, with the remainder written by parliamentary staff or outside organisations⁴⁶¹.

A Cabinet Office document detailing the work of the Office of the Parliamentary Counsel describes how it is 'comparatively rare for a non government amendment to be drafted in a form in which it can be accepted unchanged or without the addition of further consequential amendments'⁴⁶² as opposition and backbench amendments are 'very often defective in some degree'⁴⁶³. The onus however is on the government 'which alone has drafting resources, to clean up the drafting'⁴⁶⁴. It recommends that amendments are accepted in principle by a Minister and introduced at the report stage of the bill:

"In principle no amendment should be accepted without the OPC team having been consulted. Usually it will be better to undertake to accept it in principle and to come back with Government amendments at a later stage. The OPC team will be able to advise on the most appropriate course of action."⁴⁶⁵

This requirement for redrafting by Parliamentary Counsel means that even where a minister holds a very favourable attitude towards a non government amendment, it is more likely to be accepted only in principle and reintroduced as a government amendment at report.

iii) Undertakings and favourable amendments require departmental and possibly Cabinet level approval

When preparing speaking notes for ministers attending bill committees, Cabinet Office guidelines note that if the recommendation given to the minister is to be 'anything but resist'⁴⁶⁶, Parliamentary Counsel must have been consulted. The guidelines on cabinet committees also note that it is 'difficult to get clearance [for amendments and policy changes] at short notice'⁴⁶⁷. It is unlikely then that an amendment would receive clearance whilst a committee was still sitting. The true viscosity of a committee may therefore only be apparent when an amendment has been cleared by the relevant department and the Cabinet Committee and redrafted by the government minister before being moved again at report. It is interesting to note however that the frequency of such amendments at

⁴⁶¹ Parliamentary Clerk, 28 November 2012, Interview with author.

⁴⁶² *Working with Parliamentary Counsel*, London: Cabinet Office, January 2011, p. 65.

⁴⁶³ *ibid.*, p. 200.

⁴⁶⁴ *ibid.*

⁴⁶⁵ *ibid.*, p. 65.

⁴⁶⁶ *Guide to Making Legislation*, London: Cabinet Office, June 2012, p. 199.

⁴⁶⁷ *ibid.*, p. 8.

report occurs despite recommendations that Ministers 'be selective'⁴⁶⁸ in the undertakings they give to committee members.

iv) Changes are often the product of long term campaigns

Whilst committee stage is most often the starting point for changes to government bills, particularly for the case of the opposition frontbench, it can form just one part of a much wider campaign by MPs. This is particularly true for backbenchers who may have spent many years campaigning on an issue before a government legislative proposal becomes a platform to pursue the issue in a more constructive manner. A bill committee may in such instances form a perfect arena in which to table an amendment and to continue to press the government for a satisfactory response in the run up to report stage. Any changes will have been prompted by the bill committee, but will be the actual product of a much wider campaign.

This could be seen during the committee stage of the Commonhold and Leasehold Reform Bill in the 2001-02 parliamentary session. Shona McIsaac (Labour) tabled amendments in committee regarding an extension of the time personal representatives have in which to change their rights following the death of a homeowner, an issue on which she had been lobbying the government for two years, having first introduced a Ten Minute Rule Bill to address the problem in July 2000⁴⁶⁹. The amendments sought to ensure that when a leaseholder passed away, the right to the lease would pass to personal representatives who would have to exercise that right within five years of the grant of probate. The government minister, Sally Keeble, agreed to 'consider extending the period from one to two years by tabling a Government amendment on report'⁴⁷⁰. Two government amendments were later moved at report in response to what were described as 'the very persuasive arguments made in committee'⁴⁷¹. The amendment did not extend the period of time for the right to a lease to five years as requested, but to a compromise of two years. Opposition backbencher and committee member Bill Cash (Conservative) described the change as 'a tremendous achievement of the Committee'⁴⁷². This change to the government bill had therefore been the product of a long term parliamentary campaign by the Labour backbencher. The committee stage of the bill had been the ideal opportunity in

⁴⁶⁸ *Guide to Making Legislation*, London: Cabinet Office, June 2012, p.202.

⁴⁶⁹ S McIsaac, *HC Debates*, 13 March 2002, col. 934.

⁴⁷⁰ S Keeble, *5th Sitting, Commonhold and Leasehold Reform Bill Committee*, 22 January 2002, col. 140.

⁴⁷¹ S Keeble, *HC Debates*, 13 March 2002, col. 932/3.

⁴⁷² B Cash, *HC Debates*, 13 March 2002, col. 935.

which to further this campaign and the discussions arising in committee as a result of the amendment prompted the government to take action at report stage.

Adaptation of Parliamentary Behaviour to Maximise Policy Impact

If committee stage itself is not the prime arena for influencing government legislation, one would expect committee members to be adapting their behaviour in order to maximise their potential impact on policy. There is evidence that MPs are indeed recognising the importance of committee work at later stages of the legislative process and are adjusting their actions in bill committees accordingly. One very noticeable element of this is the voluntary withdrawal of proposed amendments instead of pressing for a committee vote, as MPs prefer to lobby government ministers in the run up to report stage.

Having moved an amendment in committee, MPs are often unwilling to then push for a division in the committee itself. Instead, upon hearing the government's response and having perhaps probed a few further details on the issue, they will simply decide to withdraw the amendment. A less adversarial approach towards the minister is seen to be a good way of encouraging policy changes between committee stage and consideration at report. As one Member noted, it is particularly effective to speak in committee 'with a touch of charm, a smile and so forth, then you are going to do so much better in bill committees than if you see bill committees as an extension of the crusade'⁴⁷³. Such behaviour allows you to 'mark out [your] territory'⁴⁷⁴ on a particular issue and to further your concerns with the minister between committee and report, in the hope that the issue gains momentum and that the desired change is made. The attitude of MPs in committee towards the government minister(s) thus becomes important. As one Member noted:

"I've always thought that the private discussions, being part of the team, being willing to argue things privately and in committee, would pay more dividends than shouting from the outside all the time"⁴⁷⁵.

The MPs interviewed spoke of divisions in committee as tools for exposing opposition points of view or for getting your stance on an issue 'on the record' rather than as a means of achieving any form of tangible change. As one MP commented:

"you've got to make a value judgement. And you could vote on every amendment which would just be rather churlish. You could vote on changing 'may' to 'shall' or whatever, so

⁴⁷³ Government Backbench MP, 13 October 2010, Interview with author.

⁴⁷⁴ Opposition Frontbench MP, 4 April 2010, Interview with author.

⁴⁷⁵ Government Backbench MP, 8 April 2010, Interview with author.

realistically you stake out your ground where the biggest, biggest divisions are and that's where you tend to concentrate your votes"⁴⁷⁶

In this way committee members appear to be making judgements on each amendment as to the form of behaviour which is more likely to bring about a change in policy. If change is unlikely as the issue in question is particularly controversial or divisive, a division may be called in order to record the opposition's stance on the policy issue. If on the other hand, a change is more likely, MPs would refrain from doing so.

It could easily be said that such behaviour has always been practiced in bill committees. A common sense approach would suggest that a more cooperative and consensual approach from an MP moving an amendment would result in a more favourable response from the minister. However, if modern committee behaviour is compared with that recorded by John Griffith it is apparent that such behaviour has increased significantly. *Table 18* displays the number of amendments in which a formal division was taken in committee. It demonstrates that MPs pushed far fewer amendments to a formal vote in the whole of the 2000-2010 period than they did in the three parliamentary sessions analysed by Griffith. A particular fall can be seen in amendments moved by government backbenchers, which have fallen by two thirds since the 1970s.

Table 18. Divisions in Bill Committees

Sample	Government BB		Opposition		Total Divisions	Average per bill
	A	N	A	N		
1967-1971*	9	65	13	980	1067	9.6
2000-2010	7	18	5	981	1021	7.3

*Data taken from Griffith 1974, pp. 260-266

A = amendments agreed to on a division

N = amendments negated on a division

Further evidence of this behavioural adjustment and the potential rewards of adopting a more consensual strategy and of post-committee lobbying can be found in the report stage debates. Government ministers explicitly referred to 1431 amendments made to government bills at report stage as being prompted by the bill committee discussions. This is an average of over ten amendments for every government bill in question. The comparable statistics from the earlier Griffith sample are much lower; just 365 government amendments were noted as being moved at report stage in direct response to undertakings given in committee; an average of just three per government bill.⁴⁷⁷ This difference is even greater when one considers that the figure for the 2000-2010 period

⁴⁷⁶ Opposition Frontbench MP, 31 March 2010, Interview with author.

⁴⁷⁷ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, pp. 167-178.

includes *only* occasions where the government minister himself concedes that an amendment has been made in response to committee; the figures listed by Griffith are his own estimation based on the reading of committee debates⁴⁷⁸. An equivalent figure for the current sample would be very likely to show that the impact of committee debates at report stage is actually much higher than the – already large – figure previously noted.

As noted earlier, simply analysing the frequency of these changes offers no guide as to the actual policy impact that bill committees are making at report stage. Although these changes made at report stage are often minor drafting points, they are also more likely to contain substantive changes to the bill in question than those agreed to in committee. They include a series of government amendments introduced at the report stage of the Adoption Bill (2001-02) regarding birth mothers' access to their children's records, which was prompted by opposition amendments which were discussed in committee. The Shadow Minister noted that the change would not have happened 'had it not been articulated in such a constructive way by us in committee'.⁴⁷⁹ Other significant changes include those made to the UK Borders Bill, described as 'a textbook example of ... how the committee stage can improve a Bill ... if ministers are flexible enough to take on board arguments made in good faith by opposition parties'.⁴⁸⁰

Committee members themselves have referred to this change in approach and the tendency for ministers to reconsider committee matters at report on a more frequent basis than ever before. George Young for example noted in 2002 that under previous governments 'we were not given nearly as many concessions or nearly as much sympathy and understanding'.⁴⁸¹ The period following committee stage, rather than committee stage itself, is increasingly becoming the arena in which legislative impact is observed.

Conclusion

In conclusion, although little change is made to bills through formal committee amendments, the milder influence of bill committees between 2000 and 2010 has proved to be considerable, prompting the government to make changes to a series of bills that it may not otherwise have made. Through assurances and undertakings from ministers, bill committees can have an extensive impact on government legislation, resulting in

⁴⁷⁸ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 206.

⁴⁷⁹ Opposition Frontbench MP, 4 April 2010, Interview with author.

⁴⁸⁰ D Green, *HC Debates*, 9 May 2007, col. 194.

⁴⁸¹ G Foulkes, *HC Debates*, 27 February 2002, col. 780.

significant changes to measures of public policy. Although the technique of measurement is not perfect, it offers a much more accurate presentation of bill committee impact than the consideration of formal amendments alone. In relation to the hypotheses noted earlier, it can be said quite conclusively that bill committees do constrain the government to a much greater degree than is traditionally noted in the literature; and to a greater degree than that identified by Griffith in his comprehensive study of bill committees.

Having established that bill committees can – and do - make a difference to government legislation it is possible to try to identify why some committees are able to make extensive changes whilst others make none at all. Whilst over 40 per cent of amendments in the Drugs Bill Committee (2004-05) and the Policing and Crime Bill Committee (2008-09) were coded as having some form of milder influence, others such as the International Criminal Court Bill Committee (2000-01) and the Statistics and Registration Service Bill Committee (2006-07) saw none at all. Bill committees do not work in a vacuum; a series of internal and external factors can affect the likelihood of concessions being made by the government either during, or as a result of, the committee stage. They include the level of specialisation of committee members in the topic under consideration, their attendance at committee, the Government Minister responding to amendments and the prevailing committee culture, as well as the relative importance of the bill being scrutinised. These factors will be considered in the following sections to determine the optimal conditions for legislative viscosity.

7. Specialisation and Legislative Viscosity

Do Committees Make a Difference?

Having examined the work of bill committees in terms of the formal and milder constraints they are able to exert over government legislation it is possible to consider which – if any – variables may influence the extent of this constraint. As Joseph LaPalombara states, a legislature must have specialised committees if it is to be a ‘significant political factor’⁴⁸². Specialisation within committees is therefore a pertinent variable to consider. Specialisation in bill committees has not been well studied in the UK Parliament; perhaps due to the pervasive opinion that investigative select committees rather than legislative committees are the bastion of expertise. One would hypothesise however that viscosity would increase if a committee contained Members with very high levels of specialisation in the area being scrutinised, particularly when compared to one composed mainly of laymen. Members with a greater understanding of the bill, particularly its more technical aspects, would be expected to take more of an interest, to table suitable amendments and to be better equipped to put forward a persuasive argument in debate. In theory if not in practice, they should have a much greater capacity to put a minister moving government amendments under thorough and thoughtful scrutiny. Indeed, if select committees can be ‘influential on policy outcomes’⁴⁸³ then so too should more specialised bill committees.

Measuring Specialisation

As noted in the methodology, the degree of specialisation present in bill committees is measured here in a similar manner to that of Kimber and Richardson’s 1968 study, with a basic distinction being made between first and second hand specialisation⁴⁸⁴, that is specialisation acquired outside the House of Commons, usually prior to their election as MP and specialisation acquired during a Member’s time in the House through ministerial portfolios and participation in relevant select committees and All-Party-Parliamentary Groups. A further distinction is then made as to the strength of this specialisation,

⁴⁸² J LaPalombara, *Politics Within Nations*, New Jersey: Prentice Hall, 1974, p. 123.

⁴⁸³ M Russell and M Benton, *Selective Influence: The Policy Impact of House of Commons Select Committees*, The Constitution Unit: UCL, June 2011, p. 12.

⁴⁸⁴ R Kimber and J J Richardson, ‘Specialization and Parliamentary Standing Committees’, *Political Studies*, Vol. 16, 1, 1968, pp. 97-101.

producing a four box classification of specialisation (strong first hand, mild first hand, strong second hand and mild second hand)⁴⁸⁵. Specialisation has been considered separately for every bill committee. Thus a Member may be considered to be a specialist in several policy areas both within the same parliamentary session and across several sessions. This method of analysis is particularly fitting in the current parliamentary climate. Criddle for example noted in 2002 that ‘increasingly, more candidates have had a variety of jobs’, citing one Labour candidate ‘who spent half his working life as a teacher and half as a builder’⁴⁸⁶. It is quite likely therefore that a Member will possess more than one area of expertise and this bodes well for committee viscosity.

Specialisation in Bill Committees

i) Overview

The picture of bill committees painted in the literature and by MPs themselves is one in which appointments are typically *not* made by virtue of a Member’s knowledge or expertise in a policy area. On the whole, MPs do not consider bill committees to have any great degree of specialisation. Peter Luff (Conservative) has noted that “broadly speaking, we are not experts in committee”⁴⁸⁷ and it is not uncommon for MPs to describe themselves as a ‘complete novice’⁴⁸⁸ in the subject matter during the initial committee debate. Such opinions about the policy knowledge of MPs are not confined to bill committees. Judge for example writes of the ‘perpetuation of generalist values’⁴⁸⁹ in the House of Commons as a whole.

Specialisation is thus considered to have only ‘tenuous’⁴⁹⁰ roots in the House of Commons and particularly in bill committees. The general perception is that ‘the Government would normally stuff [committees] with placemen’⁴⁹¹ and that backbench MPs often have to be ‘persuaded by the Whips to serve’⁴⁹². This is certainly true for some bills. On several occasions across the decade, government backbenchers expressing strong opposition to a bill at second reading have not been appointed to the subsequent bill committee. The Asylum and Immigration (Treatment of Claimants etc) Bill (2003-04) is a good example of

⁴⁸⁵ See Chapter 3 for more detailed information.

⁴⁸⁶ B Criddle, ‘MPs and Candidates’ in D Butler and D Kavanagh (eds.), *The British General Election of 2001*, Basingstoke: Palgrave, 2002, p. 202.

⁴⁸⁷ P Luff, *24th Sitting, Hunting Bill Committee*, 25 February 2003, col. 1116.

⁴⁸⁸ M Fisher, *2nd Sitting, Road Transport Bill Committee*, 20 January 2005, col. 66.

⁴⁸⁹ D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p. 22,

⁴⁹⁰ *ibid.*, p. 148.

⁴⁹¹ C Hendry, *4th Sitting, Energy Bill Committee*, 21 February 2008, col. 128.

⁴⁹² I Wright, *1st Sitting, Housing and Regeneration Bill Committee*, 11 December 2007, col. 3.

this, the Opposition spokesman expressing his surprise that 'many Members spoke [at second reading] ... whom one would naturally expect to have been members of the Committee,'⁴⁹³. The committee he noted, appeared to be filled instead with 'members whom [the Government] think will make no objection to their plans'⁴⁹⁴. The non appointed members included Jeremy Corbyn (Labour), Bob Marshall Andrews (Labour) and Diane Abbott (Labour) who 'spoke dramatically against the Bill'⁴⁹⁵ and had considerable policy knowledge. Diane Abbott for example had previously worked in the Home Office as a civil servant and for the National Council for Civil Liberties whilst Jeremy Corbyn had a strong background and interest in human rights issues⁴⁹⁶. Any of these MPs would have brought formidable knowledge to the bill committee, yet are all generally considered to be party rebels. All three are listed in Cowley and Stuart's work on the 2001 Parliament as being among the "most rebellious MPs"⁴⁹⁷, voting against the government on more than half of the main issues between 2001 and 2003. Jeremy Corbyn in particular 'heads the list'⁴⁹⁸ of Labour rebellions, voting against the government on 87 occasions over these two parliamentary sessions.

Detailed knowledge of a policy area, particularly if your opinion is contrary to that favoured by the government, can act as a barrier to committee selection. Indeed, one MP noted when interviewed that 'knowing what you're talking about in a particular policy area [can be] a positive disadvantage'⁴⁹⁹ in terms of selection. Most MPs could point to at least one occasion on which they participated in a bill committee where their colleagues had little specialisation. One MP expressed disappointment in the specialisation found in the Charities Bill Committee:

"I was very struck, the first one that I ever served on was the committee on the Charities Bill and I think I was the only person there who had ever had a career in the charity sector. There were a few other people who'd had involvement, but the majority of people honestly didn't know one end of a charity from another. And I don't think that means that they are necessarily not qualified to sit on a committee on this. I mean we can't all be experts in everything and there aren't enough experts on every subject going around. But I did feel slightly alarmed that legislation was being made with not a great deal of input from people who actually worked in that particular field."⁵⁰⁰

⁴⁹³ H Malins, *1st Sitting, Asylum and Immigration (Treatment of Claimants etc) Bill Committee*, 8 January 2004, col. 4.

⁴⁹⁴ *ibid.*

⁴⁹⁵ *ibid.*

⁴⁹⁶ 'About Jeremy', *Personal Website of Jeremy Corbyn MP*, http://www.jeremycorbyn.org.uk/?page_id=249 (accessed 25 October 2012)

⁴⁹⁷ P Cowley and M Stuart, 'When Sheep Bark: The Parliamentary Labour Party since 2001', *British Elections and Parties Review*, 14, 1, 2004, p. 219.

⁴⁹⁸ *ibid.*, pp. 214-15.

⁴⁹⁹ Government backbencher, 3 March 2010, Interview with author.

⁵⁰⁰ Opposition Frontbench MP, 24 November 2010, Interview with author.

Whether intentional or not, the appointment for this committee did not appear to bring Members' specialisation to the fore; the majority had no specialisation in the subject area⁵⁰¹. Many authors describe the prevalence of executive dominance in the Commons and how this can be entrenched through parliamentary procedures. Kelso for example highlights bill committees as having 'preserved executive strength'⁵⁰² in the Commons. Judge adds a specialisation dimension to this notion, describing how a minister's position in Parliament (or in this case in committee) can be significantly strengthened if those engaged in scrutiny are 'blindfolded'⁵⁰³ and thus unable to scrutinise a bill as effectively. When interviewed, one government minister discussed this further, noting that:

"it's often said isn't it that the whips advise the Prime Minister to pick ministers who don't know anything about the subject and the Whips themselves pick Members for committee who don't know anything about the subject in order that they won't ask difficult questions"⁵⁰⁴.

The appointment of Members with very little or no apparent knowledge of the subject area can thus bring great benefits to the minister leading the committee and ultimately, the government's legislative programme as a whole, facilitating a more easy passage in which the constraining capacity of committees is restricted.

This does not mean however, that legislative committees possess no specialisation. Although bill committees 'make no claim to be specialised'⁵⁰⁵ Wheare notes that they 'exhibit more of the qualities of a system of specialized committees than may appear at first sight'⁵⁰⁶. House of Commons procedural rules state that MPs appointed to bill committees should have at least some interest or specialisation in the policy area in question; Members' 'qualifications'⁵⁰⁷ are required to be taken into consideration during the appointment process. Specialisation is, as Judge suggests 'an acknowledged feature of parliamentary life'⁵⁰⁸. It is perhaps a necessary and inevitable feature of the job to develop some degree of specialisation and knowledge of at least part of a policy area. An MP cannot for instance be appointed to the position of Chair of a select committee and not be

⁵⁰¹ 52 per cent of Members were coded as having no apparent specialisation.

⁵⁰² A Kelso, *Parliamentary Reform at Westminster*, Manchester: Manchester University Press, 2009, p. 36.

⁵⁰³ *ibid.*, p. 36.

⁵⁰⁴ Government Minister, 3 March 2010, Interview with author.

⁵⁰⁵ D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p.148.

⁵⁰⁶ K C Wheare, *Government by Committee: An Essay on the British Constitution*, Oxford: Clarendon Press, 1955, p. 155.

⁵⁰⁷ W McKay *et al.* (eds.), *Erskine May Parliamentary Practice: The Law, Privileges, Proceedings and Usage of Parliament*, 23rd Edn., London: Lexis Nexis, 2004, p.799.

⁵⁰⁸ D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p.6.

considered to have specialisation in policy areas directly related to that committee's departmental portfolio. They would therefore come to the committee with some degree of specialisation.

Previous work has noted how MPs are advised to specialise upon first entering the House of Commons⁵⁰⁹. King for instance notes that Members 'almost have to specialise'⁵¹⁰ in the House. Whether or not they consider themselves to be 'experts', most Members will develop some form of specialisation during their time in Parliament by virtue of the committees to which they find themselves appointed, the ministerial posts awarded to them and the constituency issues that they pursue. This form of specialisation may be unintentional or even accidental but it exists nonetheless. In addition, most MPs hold some form of policy specialisation derived from their previous occupations or personal circumstances. Given that government legislation covers all aspects of daily life it is difficult to think of a career which would not bring some form of specialisation in at least one policy area, however broad or technical this policy area may be. Most MPs when asked can highlight the detailed policy knowledge and specialisation of their colleagues with ease⁵¹¹, even if they do not consider themselves to have any strong specialisation. Paddy Tipping for instance cited his colleague Alan Whitehead as having a strong specialisation in energy and environmental policy⁵¹².

Members of Parliament with policy specialisation can find themselves on a bill committee by appointment or by request. Cabinet Office guidelines suggest that government ministers may 'wish to suggest the selection of members from among those interested in the bill'⁵¹³ and opposition spokesmen or party whips will often seek to appoint MPs with more detailed policy knowledge. One Opposition frontbencher for instance noted that he would 'always go and try and find people who I think can contribute to the committee rather than just let the Whip nominate Buggins' turn on it'⁵¹⁴. Secondly, MPs may request a place themselves, asking their party whips or spokesman to appoint them to a bill committee in which they have a particular interest. Several MPs described how they had requested to be appointed to committees. Alan Whitehead (Labour) for example asked to be appointed to the Energy Bill Committee and Marine Bill Committee, Charles Walker

⁵⁰⁹See for example W D Muller, 'Trade union MPs and parliamentary specialisation' *Political Studies*, 20, 3, 1972, p. 317.

⁵¹⁰A King, *British Members of Parliament: A Self Portrait*, London: Macmillan Press, 1974, p. 69.

⁵¹¹See for example D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p.186.

⁵¹²Paddy Tipping MP, 7 April 2010, Interview with author.

⁵¹³*Guide to Making Legislation*, London: Cabinet Office, June 2012, p. 188.

⁵¹⁴Opposition Frontbench MP, 4 April 2010, Interview with author.

(Conservative) 'specifically requested'⁵¹⁵ to be appointed to the Mental Health Bill Committee and the Marine Bill Committee whilst Martin Horwood (Liberal Democrat) noted that he was 'very keen to do the Floods Bill Committee'⁵¹⁶. His constituency had suffered particularly badly during the 2007 floods and so it was 'an incredibly important constituency issue'⁵¹⁷. As Tam Dalyell (Labour) commented in an interview with *The Sunday Times* 'the best thing I've learnt is not to open my trap about things I know nothing about'⁵¹⁸. In other words it is very unlikely for an MP to ask to be appointed to a committee on which they have no specialisation whatsoever.

ii) *Levels of Specialisation by Session*

Analysis of the committees within the sample concurs with the above; finding that considerable levels of specialisation are present within committees. *Figure 5* presents a basic overview of the levels of specialisation in each parliamentary session, showing the divide between committee members with some form of specialisation and those with none. The degree of specialisation within each committee can be expressed as both the overall percentage of members with first and second hand specialisation or by a more detailed breakdown of the percentage of strong specialists, mild specialists and non specialists. On average 63 per cent of bill committee members across the sample had some form of specialisation in the subject area with 37 per cent having no apparent specialisation. The level of committee specialisation itself is fairly consistent, ranging from 52 to 68 per cent across the sessions. No distinction is made here between those with very high levels of specialisation and those possessing only a mild degree. However, this figure should be interpreted in a very positive light; on average nearly two thirds of all members appointed to committees would be expected to have at least some knowledge of the policy area being scrutinised⁵¹⁹. This is somewhat lower than in previous studies of specialisation in committees. Judge for example found that between two-thirds and three quarters of Members were considered to be 'highly specialised' in their committee activity in the 1970s, though specialisation here is measured differently⁵²⁰. Specialisation in

⁵¹⁵ Opposition MP, 13 October 2010, Interview with author.

⁵¹⁶ Government Minister, 24 November 2010, Interview with author.

⁵¹⁷ Government Minister, 24 November 2010, Interview with author.

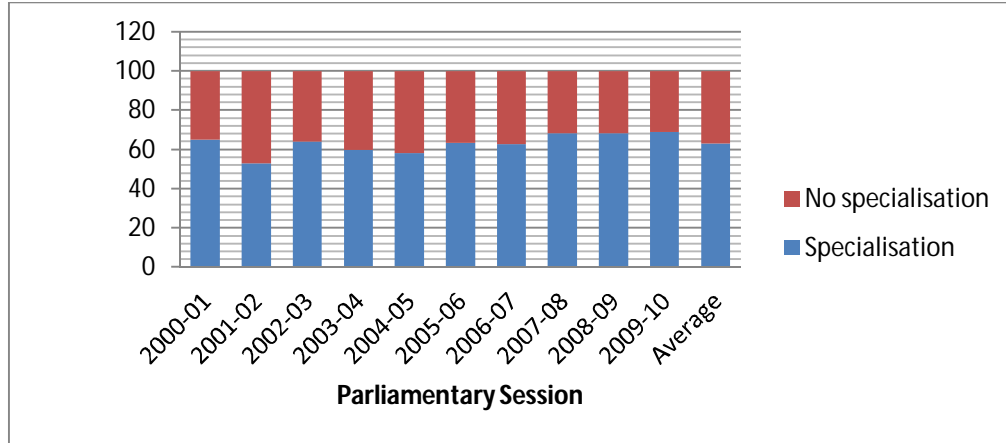
⁵¹⁸ T Dalyell, *The Sunday Times*, 28 September 1975, as quoted in D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p. 71.

⁵¹⁹ The average figure across all sessions is 63.1 per cent.

⁵²⁰ D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p.166. As noted previously, Judge's measurements of specialisation included information specialisation through parliamentary activities and takes a wider view than that used here.

modern bill committees therefore is relatively high, but does not reach the levels of the 1970s House of Commons.

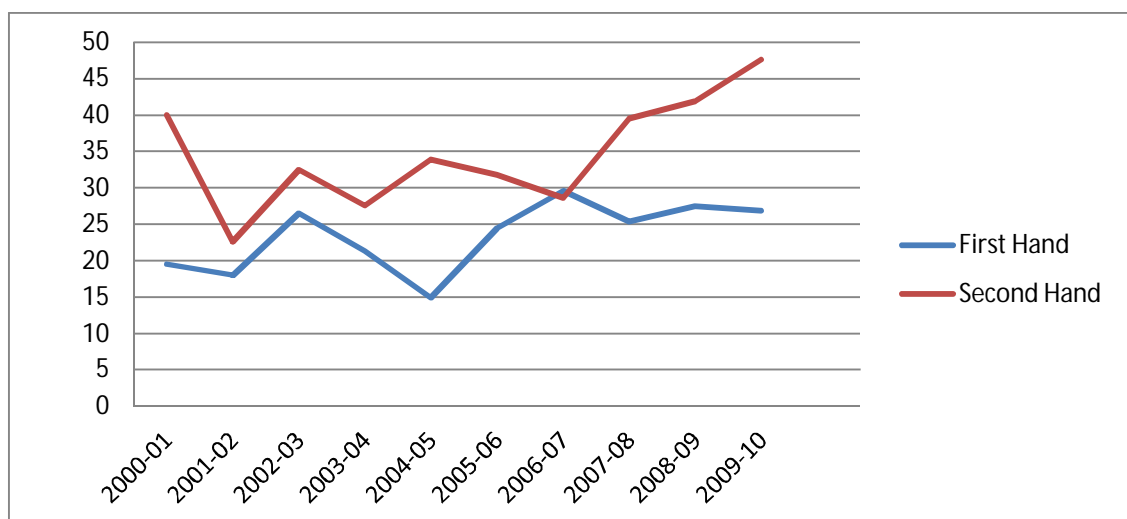
Figure 5. Specialisation in Bill Committees 2000-2010



NB: Excludes Government Ministers

The overall levels of specialisation are fairly consistent over the last ten years; roughly the same proportions of MPs appointed to bill committees have some form of specialisation in the subject area. However, if one examines the proportion of MPs with a *strong* specialisation in the policy area (displayed in *Figure 6*) it becomes apparent that the proportion of Members with strong specialisation (whether first or second hand) has actually increased over the course of the last decade.

Figure 6. Strong Specialisation in Bill Committees 2000-2010



Although both types of specialisation have seen a gradual increase over the period under study, the proportion of Members with strong second hand specialisation is much greater than those with strong first hand specialisation. In some respects this is inevitable; whilst most Members will come to the House of Commons with previous career experience in only one policy area (such as law), parliamentary work provides the opportunity to become involved in multiple subject areas. It is likely that most will continue to be interested in the policy area of their previous occupation, but will also develop new interests by virtue of committee appointments or constituency matters. As such they are likely to be considered a 'first hand' specialist in only one or two policy areas, whilst they may have second hand specialisation across several policy areas. Roberta Blackman Woods (Labour) for example would be coded as having first hand specialisation in higher education and social policy, given her previous career as a Professor of Social Policy. In Parliament however, she developed a range of additional second hand specialisation, having served on the Science and Technology Select Committee, acting as Chair of the All Party Balanced and Sustainable Communities Group and Co-Chair of the Associate Parliamentary Group for Afghanistan. Although the second hand forms of specialisation would be coded only as 'mild', she is an example of a Member diversifying their specialisation during their parliamentary career.

iii) Levels of Specialisation by Committee

Although the average levels of specialisation across parliamentary sessions have been fairly consistent, huge discrepancies remain in the levels of specialisation present within individual bill committees. This is not unique to twenty-first century committees; Kimber and Richardson found that specialisation ranged from 30 – 61 per cent⁵²¹ in 'post nucleus'⁵²² bill committees in the early 1960s. The range of appointed members with specialisation in the twenty-first century however, is particularly large, reaching as high as 95 per cent in the Local Government and Public Involvement in Health Bill Committee (2006-07 session) but falling as low as seven per cent in the Land Registration [HL] Bill Committee (2001-02 session)⁵²³. These discrepancies were also noted by Griffith who

⁵²¹ R Kimber and JJ Richardson, 1968, 'Specialization and Parliamentary Standing Committees', *Political Studies*, 16, 1, 1968, p. 100.

⁵²² Refers to bill committees from the 1960 parliamentary session onwards, following a change to the appointments process in which a nucleus of permanent members was removed in favour of ad hoc committee membership.

⁵²³ Figures refer to the specialisation of all committee members, including frontbench spokesman and those appointed as parliamentary private secretaries.

found that specialisation was especially prevalent in the areas of housing and planning, defence and health services⁵²⁴.

The Local Government and Public Involvement in Health Bill Committee therefore stands out as the committee with the greatest degree of observable specialisation among its members. The Minister himself pointed out that an extraordinary number of years of service in local government were represented on the committee, suggesting that it 'makes Brian Lara's [cricket] scores look rather low'⁵²⁵. Indeed, all but two committee members had previously been councillors. Only one committee member had no obvious specialisation in the areas of local government or health. The committee did not only score strongly in terms of first hand specialisation; nearly one third (32 per cent) of members also had a strong second hand specialisation having been members of the Communities and Local Government Select Committees or Chair of an All Party Parliamentary Group. A full breakdown of the specialisation present in this committee can be found in Appendix 16. Other committees which stand out as being particularly notable for the specialisation held by their members include the Adoption and Children Bill Committee (2001-02) where 'government members fell over themselves to outbid each other on how many years experience they had as social workers'⁵²⁶ and the Mental Health [HL] Bill Committee (2006-07), where one member noted that 'never have I seen such a thoughtful, experienced group of individuals assembled for a Bill as controversial as this. It is fair to say that we do not have a committee of yes-men or yes-people'⁵²⁷. The latter included members with personal experience of mental health issues, a former psychiatric social worker and several former nurses and biologists.

There are three potential explanations of these large discrepancies in specialisation. Firstly and most obviously, some bills are inevitably highly technical and specialised whilst others are fairly broad and all encompassing. It would be much more difficult to find a group of ten or fifteen MPs with some knowledge or interest in a more minor or technical area such as land registration or regulation than it would for a broader bill such as Children, Schools and Families (2009-10), Health (2008-09) or Health and Social Care (2000-01). A variety of pre-parliamentary careers, All Party Parliamentary Groups and select committees would allow MPs to be coded as having specialisation in the latter,

⁵²⁴ J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1972, p. 51.

⁵²⁵ P Woolas, *18th Sitting, Local Government and Public Involvement in Health Bill Committee*, 8 March 2007, col. 636.

⁵²⁶ T Loughton, *24th Sitting, Adoption and Children Bill Committee*, 17 January 2002, col. 932.

⁵²⁷ J Pugh, *1st Sitting, Mental Health (HL) Bill Committee*, 24 April 2007, col. 6.

whilst evidence of this in terms of the former would be much more limited. Additionally, there is evidence that bills covering similar policy areas have very similar levels of specialisation. The two Energy bill committees (2007-08 and 2009-10) were coded as being 69 per cent and 75 per cent specialised and the two bill committees covering children and adoption policy (2001-02 and 2005-06) saw levels of specialisation recorded as 75 per cent, and 77 per cent respectively. This consistency suggests that a great deal of Members have some specialisation in these policy areas. Party whips would not struggle to appoint a body of Members with prior knowledge of these policy areas.

Secondly, bill committees dealing with local government and home affairs legislation are more likely to have members with a considerable degree of first hand specialisation given that local government and the law are among the most prominent career routes into Parliament. The *Almanac of British Politics* for example notes that Conservative MPs coming from 'professional' occupations are 'overwhelmingly lawyers'⁵²⁸. A total of 31 per cent of the Conservative and Labour MPs entering Parliament at the 2001 General Election had previously been barristers or solicitors, whilst 30 per cent of the newly elected Labour MPs and 21 per cent of the incoming Conservative MPs had previously worked in local government⁵²⁹. This is the continuation of a long term trend of career routes in to the House. Richards' 1972 study of MPs finds similar patterns, with '125 lawyers, 93 barristers and 28 solicitors'⁵³⁰ whilst 181 Members had previous experience as councillors⁵³¹. The findings here are thus to be expected.

Thirdly, there is some evidence that government appointments to bill committees are less likely to take the specialisation of Members into account, particularly for controversial bills. This was noted earlier regarding the Asylum and Immigration (Treatment of Claimants etc) Bill (2003-04). One Labour backbencher commented when interviewed that he had not been appointed to a bill committee in over a decade, despite having considerable parliamentary specialisation in the area of education and schools, due to disagreements over the direction of government policy⁵³². His appointment to a bill committee only came in the 'wash up' period at the very end of the 2005 Parliament and in the weeks prior to the 2010 General Election; a time when few other MPs were available

⁵²⁸R Waller and B Criddle, *The Almanac of British Politics*, 7th Edn, London: Routledge, 2002, p. 21. Professional, business and manual occupations are listed here.

⁵²⁹ B Criddle, 'MPs and Candidates', in D Butler and D Kavanagh (eds.), *The British General Election of 2001*, Basingstoke: Palgrave, 2002, p. 205.

⁵³⁰ P G Richards, *The Backbenchers*, London: Faber and Faber, 1972, p. 21.

⁵³¹ *ibid.* p. 22.

⁵³² Government Backbench MP, 23 March 2010, Interview with author.

to serve on committees. Whilst low levels of specialisation may therefore be a direct result of reluctance on the part of the government to appoint specialised Members to committees, it can also be a product of the type of bill under consideration.

Specialisation and Viscosity

It has been demonstrated that bill committees contain a greater degree of specialisation than commonly supposed and that the levels of specialisation vary quite dramatically from committee to committee. However, it remains to be seen what (if any) impact these levels of specialisation have on the ability of a bill committee to exert viscosity. Mezey states that 'specialization is a prerequisite to an effective oversight capacity'⁵³³. Members of Parliament evidently concur with this statement, describing the presence of specialised backbenchers in committees as a being a 'strength'⁵³⁴. They stress that 'you can make a difference'⁵³⁵ by going on a bill committee which falls within your specialist area. Indeed, when asked what variables make some bill committees more successful than others, one Opposition MP replied that the key factor was 'the quality of the people who are on the committee [and] the level of interest that they have in the subject area'⁵³⁶.

Ministers also recognise the impact that specialised committee members can have on the scrutiny of legislation. David Kidney singled out the participation of Alan Whitehead (Labour) on the Energy Bill Committee (2009-10) as a prime example of the benefits of appointing specialised MPs to scrutinise government bills:

"Alan Whitehead ... was tremendously valuable in this committee because he knew what he was talking about. He helped ministers to get to the right positions on some things, he helped put opposition members right when they were straying away from the correct position. So I thought it was a good thing to have experienced Members of Parliament on the committee."⁵³⁷

There is some suggestion here that ministers see the appointment of specialised government backbenchers as beneficial, if only because they will provide support to the government in committee. However, one minister also implied that he would be more likely to respond positively to amendments tabled by committee members with formidable policy knowledge. He explained that as a minister 'you would look at [an

⁵³³ M Mezey, *Comparative Legislatures*, Durham: Duke University Press, 1979, p. 55.

⁵³⁴ M Hoban, *14th Sitting, Financial Services Bill Committee*, 14 January 2010, col. 476.

⁵³⁵ Government Backbench MP, April 2010, Interview with author.

⁵³⁶ Opposition MP, 13 October 2010, Interview with author.

⁵³⁷ David Kidney, Government Frontbench MP, 3 March 2010, Interview with author.

amendment] more carefully and take it more seriously if it was from a Member with considerable expertise in an area'⁵³⁸. In this way the relative specialisation of a bill committee could have an impact on the viscosity a committee is able to exert. One would expect committees containing a higher degree of specialisation among their members to see a greater number of changes being made to government bills.

Based on the above evidence from bill committee participants, several indicators can be highlighted as being important in testing the relationship between specialisation and viscosity. As with the examination of viscosity itself this relationship can be examined on a committee level (whether committees with higher levels of specialisation have a greater viscosity) or at the level of individual amendments (whether amendments moved by specialised committee members have a higher success rate than those moved by unspecialised members). Both will be analysed here. Important indicators of viscosity at the committee level include the proportion of non government amendments accepted by the government in highly specialised committees, the number of ministerial undertakings made and the number of government defeats. In addition there are two important indicators of a relationship between specialisation and viscosity at the individual amendment level: the proportion of amendments moved by backbenchers with specialisation and the success of amendments moved by subject specialists, whether in terms of formal amendments or ministerial undertakings.

i) *Number of Amendments Moved in Committee*

Analysis of all committee amendments points to a very strong relationship between overall levels of committee specialisation and the tabling of amendments in committee. On average 48 per cent of the specialised members of a bill committee will move at least one amendment, compared to just 17 per cent of those without⁵³⁹. The presence of opposition frontbenchers exaggerates this figure somewhat; they will inevitably be coded as having some degree of specialisation by virtue of their position as policy spokesman and will table the majority of their party's amendments in committee. Yet even when frontbench spokesmen are removed there remains a strong relationship between the proportion of specialised members in a bill committee and the activity by backbench⁵⁴⁰

⁵³⁸ Government Minister, 18 October 2011, Telephone interview with author.

⁵³⁹ This calculation does not take into account the number of amendments tabled. Members were simply coded as moving amendments or not moving amendments. 'Move' in this context also refers to those amendments grouped and discussed in committee but which may not have been formally 'moved'.

⁵⁴⁰ The classification of backbenchers here follows that used by David Judge and so excludes frontbench spokespersons, party whips and parliamentary private secretaries.

MPs, with more specialised committees being more likely to see backbench amendments moved (Gamma = .265, significance 0.066). On average 35 per cent of the specialised backbenchers in a committee will move an amendment, compared to just 17 per cent of their unspecialised colleagues. A specialised backbencher is thus twice as likely to table an amendment to a government bill than one who is unspecialised.

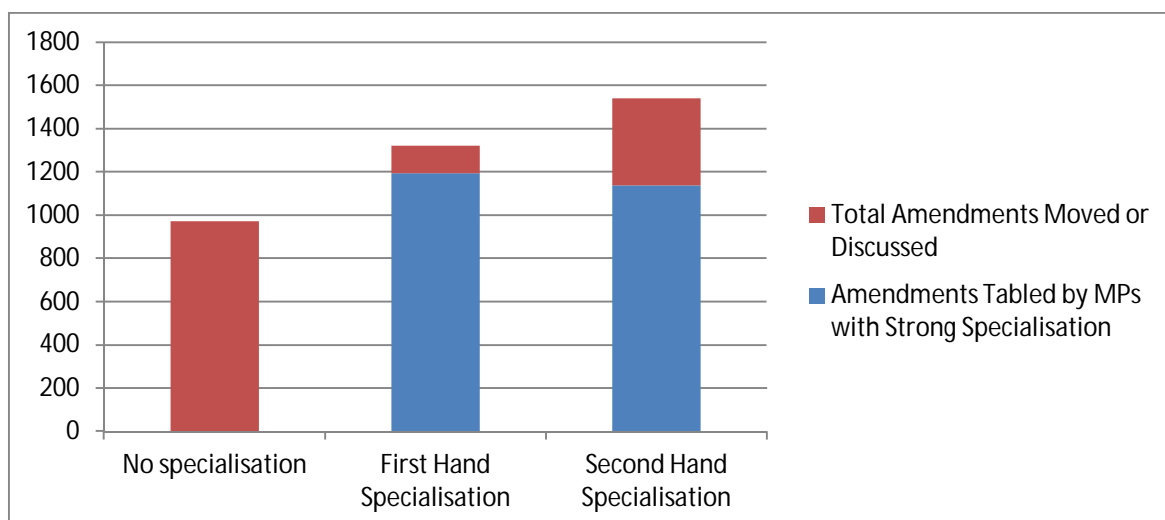
At the individual amendment level one would expect that amendments would be more likely to be tabled by those backbenchers with a degree of specialisation in the area in question. The lack of resources available to backbench MPs should mean that those with prior specialisation in the policy area under scrutiny will be more easily able to draft relevant amendments. Analysis of the individual backbench amendments moved or discussed in bill committee suggests this may well hold true. In total, 72 per cent of these amendments were moved by those with some element of specialisation⁵⁴¹. This includes 45 per cent moved by backbenchers with first hand specialisation– that which has been acquired outside their work in parliament and 50 per cent moved by those with second hand specialisation, acquired during their time as Members of Parliament.

This implies that there is a positive relationship between the specialisation of individual MPs and the moving of amendments in committee. Of even greater note however, is the data displayed in *Figure 7*. This demonstrates that a very large number of amendments are tabled by those not just with some limited knowledge of the policy area, but with strong specialisation, often developed over a long period of time. In total, 39 per cent of all backbench amendments are moved by those with strong first hand specialisation and 37 per cent by those with strong second hand specialisation⁵⁴². Although a small number of backbenchers may have strong specialisation falling within *both* the first and second hand category, 59 per cent of all backbench amendments moved or discussed in committee come from those with a strong specialisation.

⁵⁴¹ 2215 amendments were moved/discussed by backbench MPs coded as having some form of specialisation, out of a total of 3097 backbench amendments.

⁵⁴² 1194 amendments moved/discussed in committee were tabled by backbench MPs with strong first hand specialisation and 1137 were tabled by those with strong second hand specialisation.

Figure 7. Number of Backbench Amendments Moved in Committee



NB: All party spokesmen, whips and parliamentary private secretaries are excluded from these calculations

Backbench MPs with strong specialisation are therefore tabling the majority of amendments in committee. When interviewed Paddy Tipping (Labour) and Alan Whitehead (Labour) both spoke of a reciprocal arrangement during the Energy Bill Committee where they were able to support each other in tabling and talking to amendments in committee:

"It's nice to be on a bill committee with people on your side you've got confidence in. Alan will say 'would you sign this amendment' and you know, I would normally do it because I know where he's coming from ... but then follow it up and put a bit of pressure on the government."⁵⁴³

Committees with strong backbench specialisation can therefore see scrutiny collaboration, with Members supporting each other's amendments. Yet as *Table 19* illustrates, each individual backbench MP with specialisation tables (on average) slightly fewer amendments than their unspecialised colleague.

Table 19. Average Number of Amendments Moved by Backbench MPs

	<i>No Specialisation</i>	<i>Specialisation</i>
Average Number of Amendments moved	9.0	8.7

^{*}Excluding Government Ministers

⁵⁴³P Tipping, 7 April 2010, Interview with author.

This discrepancy may be a result of committee members tabling amendments on behalf of outside organisations. An MP requires no overt specialisation to be persuaded of the benefits of an amendment or to submit that amendment to the Committee Office. If it were possible to isolate those amendments which had been drafted by the mover themselves or at least those in which the content was heavily influenced by them, it may be that the number of amendments moved by unspecialised MPs would fall considerably. Indeed, those MPs who have spoken of drafting their amendments themselves, such as Alan Whitehead on the Energy Bill Committee (2007-08), are those with first hand specialisation of the subject in question.

Furthermore, the presence of those with clear specialisation may mean that specialised backbenchers will only table amendments on which they feel that they can make progress rather than amendments which are more controversial or serve only partisan purposes. The Energy Bill Committee is once again a good example of this. The membership of this committee saw something of the 'usual suspects'. The appointed backbenchers and the opposition frontbench 'knew each other quite well'⁵⁴⁴; they had served on similar bill committees and select committees together and shared non parliamentary platforms at party conferences and events held by outside organisations. One Member described how this resulted in a situation where 'you're all in a room actually knowing that you are well beyond the starting point in most of the discussions'⁵⁴⁵. In some respects this negates the ad hoc nature of committee stage. Although it is frequently pointed out that – unlike investigative select committees – bill committees lack any 'corporate ethos'⁵⁴⁶, they often contain the same small group of MPs who are particularly passionate about the policy area in question. In the case of the Energy Bill Committee, backbenchers therefore avoided tabling amendments on what Alan Whitehead describes as the 'silly sort of issues'⁵⁴⁷ and concentrated on the substantive issues of concern. In this way the low number of amendments being tabled by backbench committee members is a sign of the maturity and sophistication of committee work in a specialised committee. The average number of amendments moved by backbench committee members is therefore not necessarily a reliable indicator of the influence of specialisation.

⁵⁴⁴ Government Backbench MP, 3 March 2010, Interview with author.

⁵⁴⁵ *ibid.*

⁵⁴⁶ B Jones and P Norton, *Politics UK*, 7th Edn, Harlow: Pearson Education, 2010, p. 321.

⁵⁴⁷ Government Backbench MP, 3 March 2010, Interview with author.

ii) *Proportion of Successful Amendments in Committee*

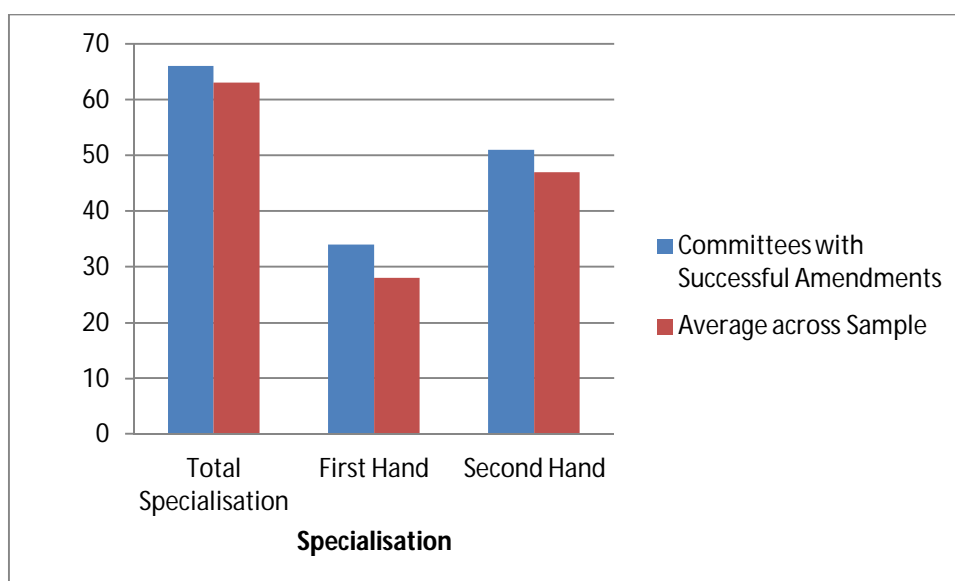
Given the evidence that some relationship exists between the specialisation of committee members and the moving of amendments, one would expect that those non government amendments which are formally accepted by a minister in committee would be drawn from those committees with high levels of specialisation among their members.

The successful non government amendments across the sample are drawn from just 28 bill committees. They include some of the most specialised committees, such as the heavily specialised Local Government and Public Involvement in Health Bill (2006-07); a committee in which 95 per cent of members had some form of relevant specialisation. Equally however, they include committees with relatively low levels of specialisation, such as the Tribunals, Courts and Enforcement [HL] Bill Committee (2006-07) in which 60 per cent of members had no obvious specialisation of any kind. In total, the levels of specialisation displayed across the bill committees witnessing successful non government amendments is remarkably average, with 66 per cent of their members coded as having some degree of specialisation, just 3 percentage points greater than the average across the sample as a whole⁵⁴⁸. Indeed, as *Figure 8* illustrates, although these successfully amending committees do have a higher than average number of specialised members, the difference is only very slight and certainly does not suggest any strong relationship between specialisation and viscosity. Neither does this select group of committees have a higher than average proportion of Members with strong specialisation. Once again the figures are remarkably average⁵⁴⁹.

⁵⁴⁸ See Appendix 17 for full list of committees.

⁵⁴⁹ 30 per cent of these committee members had strong first hand specialisation and 35 per cent had strong second hand specialisation (lower than the averages of 39 per cent and 37 per cent respectively across the decade).

Figure 8. Specialisation of Committees and Legislative Viscosity



Even if one considers the committees with the very highest levels of specialisation, the presence of any relationship is similarly unproven. Of the ten most specialised bill committees in the sample - all with over 80 per cent of their members holding some degree of specialisation – only three saw the successful passage of a non government amendment. Focusing on the upper and lower quartile offers slightly more positive evidence. Of the 35 committees falling within the upper quartile in terms of specialisation, nine saw at least one successful non government amendment. Those in the lower quartile however, saw just three⁵⁵⁰.

At the committee level at least, it seems there is little observable relationship between specialisation and formal viscosity; greater specialisation within a committee seems to have little direct effect on the potential for amendments to be accepted by the government. Even the most heavily amended bill in terms of non government amendments, the Proceeds of Crime Bill (2001-02) was scrutinised by a committee of largely unspecialised members⁵⁵¹.

Analysis at the individual amendment level is slightly more conclusive. Although the successful amendments came from committees with very average degrees of specialisation, 87 per cent of these amendments were moved by a Member with some form of specialisation in the policy area. This is much higher than the average of 63 per

⁵⁵⁰ See Appendix 18.

⁵⁵¹ 52 per cent of committee members had no specialisation in the subject matter.

cent across all amendments. When the form of specialisation is taken into account, 38 per cent of the MPs moving successful amendments had been coded as having a strong, first hand specialisation in the area in question, whilst 56 per cent held some form of second hand specialisation. A full breakdown of these amendments and Members can be seen in Appendix 17. Whilst the proportion of these MPs with strong first hand specialisation is markedly average, there is a large increase in the number with strong second hand specialisation, 19 percentage points above average. In some respects this is surprising. In others it is less so; one would expect MPs who are or who have previously been frontbench spokespersons on bill committees to be more familiar with the process of drafting and moving amendments and thus they may feel more able to move and speak to amendments in committee. In addition the specialisation of MPs in this category is drawn from previous parliamentary work. Former experience as a frontbench spokesman or government minister is likely to offer much more knowledge as to how to scrutinise effectively in committee and how to ensure the drafting of an amendment is suitable and therefore more likely to be accepted.

If one excludes frontbench spokesman, parliamentary private secretaries and party whips and so focuses on successful amendments from backbench committee members, the levels of specialisation are below average; just 57 per cent. The proportion of successful amendments tabled by backbenchers with strong first hand specialisation is 34 per cent. Over one third of successful backbench amendments are tabled by those with a very strong specialisation in the policy area.

Although a strong relationship between specialisation and successful amendments cannot be identified, it seems fair to assert that high levels of first hand specialisation are important in the passage of an amendment in committee. Over one third of all non government amendments come from those with this level of specialisation. This includes some of the more substantive changes made in committee such as John Grogan's amendment to the Water Management Bill (2009-10) to reinsert the role of Flood Defence Committees in approving the expenditure of the Environment Agency⁵⁵².

On the surface, the presence of a relationship between specialisation and the formal acceptance of amendments in committee cannot therefore be confirmed. There are several reasons why this link may not be as strong as one would expect. The first concerns the underlying motive behind the formal acceptance of amendments by ministers. It is

⁵⁵² See amendment 156, *8th Sitting, Flood and Water Management Bill Committee*, 19 January 2010, col. 282.

well documented that amendments are often accepted by the government in committee for reasons other than the virtue of the proposed change. Jennings for example describes how amendments will often be accepted to 'smooth tempers or allow more difficult matters to go through [the committee] more easily'⁵⁵³. Given that the opposition frontbench teams are likely to marshal their own party members to vote in a given way on a topic, it is perhaps more likely for a minister to accept a frontbench opposition amendment than a backbench one. Ministerial acceptance of amendments can therefore be completely unrelated to the content of the amendment or to the specialist knowledge displayed by the mover. Rather, it can be a simple tool used by ministers to engender goodwill. Contrary to what one would expect, the acceptance of an amendment by a minister can thus be not a sign of high viscosity but an indication of low constraint; acceptance has been predicated on the assumption that the committee will take a more relaxed attitude to the remainder of the bill.

Secondly, one must consider the practical reasons why amendments may be unsuccessful. Prior specialisation may bring great knowledge of a policy area or insight into some of the more technical aspects of a bill, but this does not necessarily bring with it the ability to draft amendments which are structurally sound or the ability to persuade other committee members to come around to a given point of view. As Finer notes, 'expertness in making laws consists of two main qualities: a command of the knowledge of their substance, and ability to formulate the results with the minimum of vagueness and unintentional contradiction of other parts of the statute book'⁵⁵⁴. Specialised MPs may have a degree of the former, but will not necessarily possess any of the latter. As legislation becomes more and more complex⁵⁵⁵, this difficulty is compounded. To quote Finer again 'the difficulties of modern lawmaking are colossal'⁵⁵⁶. A Member's particular specialisation may make the government minister and other committee members more likely to pay heed to their contributions in committee debate, but this is not commensurate with their amendments being well drafted. Even where ministers feel inclined to support a non government amendment, this may not always be possible due to poor drafting⁵⁵⁷.

⁵⁵³ W I Jennings, *Parliament, Reprinted Edn*, Cambridge: Cambridge University Press, 1948, p. 278.

⁵⁵⁴ H Finer, *Theory and Practice of Modern Government, Revised Edn.*, London: Methuen & Co Ltd, 1950, p. 445.

⁵⁵⁵ For further discussion of the increasing complexity of government legislation see M Korris, 'Standing up for Scrutiny: How and Why Parliament should Make Better Law', *Parliamentary Affairs*, 64, 3, 2011, pp. 564–574.

⁵⁵⁶ H Finer, *Theory and Practice of Modern Government, Revised Edn*, London: Methuen & Co Ltd, 1950, p. 445.

⁵⁵⁷ See pages 75, 115-116 for further details on drafting problems in committee.

Finally, methodological issues and limitations must be heeded, particularly the definition of a member as being 'specialised'. As Wheare notes 'the status of layman or expert will be accorded to an individual in relation to a given subject in a given situation'⁵⁵⁸. Whilst a committee such as the Local Government and Public Involvement in Health Bill may appear to have an extremely high degree of specialisation, each individual member may (and most likely will) specialise in a very different sub-topic within the broader policy framework of the bill. Thus, whilst each Member holds some form of specialisation, 'he may be a layman in regard to the field of the men sitting next to him'⁵⁵⁹. Within this committee alone, despite the majority of members having experience of working in local government, some had been elected to as local councillors, with some serving as leader of their respective councils. One member had served as Vice Chair of the Public Services Committee of the Association of Metropolitan Authorities and another served as Vice Chair of the Local Government Association. Whilst all would be considered to have experience of local government, each would bring their own individual perspective; the precise policy specialisation of each member would be varied.

In addition, it is not clear where Members are moving an amendment that they have written or initiated themselves and where they have tabled an amendment that has been offered to them by an outside organisation or another Member. Some amendments are undoubtedly drafted by the MP themselves. Andrew Selous (Conservative) for example described how he wrote a new clause for the Pensions Bill committee 'in my own hand, on second reading,' having been 'prompted to do so by the powerful and persuasive speech'⁵⁶⁰ from another Member. However, Members also admit to tabling considerable numbers of amendments on behalf of outside organisations. During the scrutiny of the Sexual Offences [HL] Bill (2002-03) Dominic Grieve (Conservative) described how one amendment he had tabled was 'not my amendment; it was introduced by Liberty'⁵⁶¹. He went even further than this, noting that 'I am not wholly convinced of the merit of the amendment, but I am convinced that it raises a legitimate issue that the Committee should consider'⁵⁶². The tabling of amendments on behalf of outside organisations is not new. Norton notes in 1991 that the lobbying of committee members was 'extensive'⁵⁶³ and cites a survey of interest group representatives from 1986 in which over 50 per cent claimed to

⁵⁵⁸ K C Wheare, *Government by Committee: An Essay on the British Constitution*, Oxford: Clarendon Press, 1955, p. 15.

⁵⁵⁹ *ibid.*

⁵⁶⁰ A Selous, *2nd Sitting, Pensions Bill Committee*, 23 January 2007, col. 57/8.

⁵⁶¹ D Grieve, *5th Sitting, Sexual Offences (HL) Bill Standing Committee*, 16 September 2003, col. 193.

⁵⁶² *ibid.*

⁵⁶³ P Norton, *New Directions in British Politics*, Aldershot: Edward Elgar, 1991, p.71.

have asked an MP to table an amendment on their behalf⁵⁶⁴. This is perhaps the reason why one Minister noted when interviewed that ‘a lot of amendments are drafted by those with expertise in an area even if the person moving the amendment doesn’t have any’. Thus, specialisation in terms of those moving amendments is not always highly accurate.

iii) *Government Defeats*

The third indicator is difficult to assess properly given that government defeats through formal divisions occurred in only one bill committee across the decade – the Apprenticeships, Skills, Children and Learning Bill (2002-03). It is well documented in the literature that defeats in bill committees are rare, albeit slightly more frequent than defeats on the floor of the House⁵⁶⁵ and thus this is no different to the normal pattern of voting behaviour in bill committee.

Although four government amendments were defeated during this bill committee it is futile to consider the effect of specialisation on this defeat as in all cases a division was called when Labour Members simply failed to attend. Specialisation therefore does not appear to have an impact upon the likelihood of government defeats in any of the bill committees studied. This corresponds somewhat with findings from previous studies. Norton for example does not cite specialisation in his list of reasons for government defeats in committees,⁵⁶⁶ whilst Mezey notes that pressures on the government in the form of defeats are ‘not generated from independent sources of committee expertise’⁵⁶⁷. Analysis of this indicator over a much longer period of time may be more likely to show the presence of a relationship, but the only conclusion that can be drawn here is that specialisation plays no part in what is perhaps the most visible and widely reported indicator of viscosity in bill committees.

iv) *Number of Ministerial Undertakings made in Committee*

With the viscosity of legislative committees over the 2000-2010 period being much more prevalent through ministerial undertakings, one would also expect the impact of

⁵⁶⁴ P Norton, *New Directions in British Politics*, Aldershot: Edward Elgar, 1991, p.71.

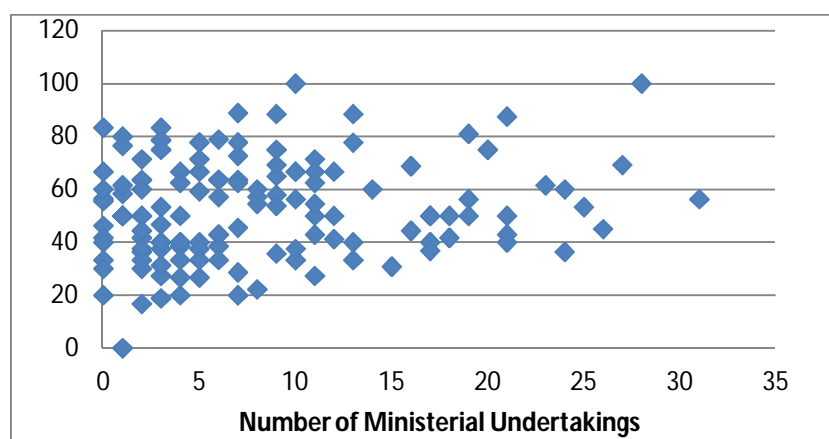
⁵⁶⁵ See for example, P Norton, ‘Dissent in Committee: Intra-Party Dissent in Commons’ Standing Committees 1959-74, *The Parliamentary*, 57, 1, 1976, p. 16 and S A Walkland, *The Legislative Process in Great Britain*, London: George Allen and Unwin Ltd, 1968, p.76.

⁵⁶⁶ P Norton, ‘Dissent in Committee: Intra-Party Dissent in Commons’ Standing Committees 1959-74, *The Parliamentary*, 57, 1, 1976, p. 17.

⁵⁶⁷ M Mezey, *Comparative Legislatures*, Durham: Duke University Press, 1979, p. 97.

specialisation on committee viscosity to have the most visible impact on this form of committee influence.

Figure 9. Bill Committee Specialisation and Ministerial Undertakings



A basic analysis of specialisation within committees and the number of undertakings given in that committee (*Figure 9*) suggests that there is a stronger correlation between specialisation and ministerial undertakings than can be seen for formal amendments. On average, more specialised bill committees receive a slightly higher number of undertakings⁵⁶⁸ from the minister ($r = .196, p < 0.05$) than those which are less specialised. If one considers only backbench committee members there is a stronger correlation between committee specialisation and ministerial undertakings ($r = .282, p < 0.01$) and one which is more significant.

The presence of a relationship between committee specialisation and ministerial undertakings is perhaps to be expected; it seems only fair that those committees with very high levels of specialisation will be more persuasive in the amendments they table and the arguments they put forward over the course of debate. More interesting however, is the cross tabulations between the degree of backbench specialisation within a bill committee and the *type* of undertaking given by the minister. As demonstrated in *Table 20*, when backbench specialisation within committees increases, the number of report stage commitments ($r = .246, p < 0.01$) and commitments to reconsider amendments ($r = .203, p = < 0.01$) also increases significantly⁵⁶⁹.

⁵⁶⁸ This is calculated on the number of undertakings and not the number of amendments in which undertakings have been given. It does not therefore include consequential amendments.

⁵⁶⁹ See Appendix 20 for a full breakdown.

Table 20. Backbench Committee Specialisation and Ministerial Undertakings

		Correlations			
		Backbench Specialisation	Total Ministerial Undertakings Made to Backbenchers	Total Report Stage Commitments Made by Ministers	Total Reconsiders made by Ministers
Backbench Specialisation	Pearson Correlation	1	.282**	.246**	.203**
	Sig. (1-tailed)		.000	.002	.008
	N	140	140	140	140
Total Ministerial Undertakings Made to Backbenchers	Pearson Correlation	.282**	1	.498**	.914**
	Sig. (1-tailed)	.000		.000	.000
	N	140	140	140	140
Total Report Stage Commitments Made by Ministers	Pearson Correlation	.246**	.498**	1	.137
	Sig. (1-tailed)	.002	.000		.053
	N	140	140	140	140
Total Reconsiders made by Ministers	Pearson Correlation	.203**	.914**	.137	1
	Sig. (1-tailed)	.008	.000	.053	
	N	140	140	140	140

** . Correlation is significant at the 0.01 level (1-tailed).

One cannot say then that ministers are simply taking the 'easier' option and conceding to compromises and meetings with specialised committee members or that they are simply promising to amend the regulations accompanying a bill. Rather they are much more likely to undertake to consider amendments between committee and report stage and to guarantee that government amendments will be tabled at report stage. This implies that the degree of specialisation within a committee has a very significant impact on committee viscosity. Ministers give more undertakings to look again or to amend government bills in more specialised committees than they do in those which are less specialised. Viscosity is clearly greater in more specialised committees.

Specialisation at the committee level therefore has a highly significant impact on the viscosity of a bill committee. Analysis at the level of individual backbench amendments corroborates the findings about the effect of specialisation in committees.

Table 21. Measure of Association between the Specialisation of a Backbencher and Ministerial Undertakings

Symmetric Measures		Value	Approx. Sig.
Nominal by Nominal	Phi	.80	.000
	Cramer's V	.80	.000
N of Valid Cases		3097	

On a very basic level there is a strong association between the specialisation of a backbench committee member and the outcome of an amendment which is significant (Phi = 0.80, $p < 0.001$). This is demonstrated in *Table 21*. Amendments from specialised MPs dominate the undertakings given by ministers. In total, 78 per cent of the undertakings given by ministers related to amendments tabled by Members with specialisation. If one considers the percentage of amendments receiving undertakings, 15 per cent of the amendments moved by specialised backbenchers received ministerial undertakings, compared to just nine per cent of amendments from unspecialised backbenchers. Calculating the odds ratio for this data suggests that a backbencher with specialisation is nearly twice as likely to receive a ministerial undertaking than one with no specialisation⁵⁷⁰.

The particularly strong effect of first hand specialisation among backbenchers is also demonstrated at the amendment level, with 40 per cent of the amendments receiving undertakings being tabled by MPs with strong first hand specialisation in the subject area. Those MPs with relevant specialisation acquired outside Parliament are clearly better placed to prompt changes to be made to government bills, with ministers being persuaded of the virtue of their amendments. Considering the type of undertaking given by ministers illustrates the form of constraint more likely to be exerted by amendments from specialised MPs. Appendix 20 demonstrates in more detail the relationship between specialisation and each form of undertaking and shows a considerable relationship between the levels of specialisation and the commitments made by ministers to reconsider amendments⁵⁷¹.

⁵⁷⁰ The odds of a backbencher with specialisation receiving an undertaking from the minister are 1.76 times greater than for a backbencher with no specialisation.

⁵⁷¹ Phi = .061, $p < 0.001$.

Table 22. Specialisation of Backbench MPs and Ministerial Undertakings

Does MP have Specialisation? * Ministerial Undertaking Crosstabulation				
		Ministerial Undertaking		Total
		Yes	No	
Does MP have Specialisation?	Yes			
	Count	319	1806	2125
	% within Does MP have Specialisation?	15.0%	85.0%	100.0%
	% within Ministerial Undertaking	78.2%	67.2%	68.6%
	No			
	Count	89	883	972
	% within Does MP have Specialisation?	9.2%	90.8%	100.0%
	% within Ministerial Undertaking	21.8%	32.8%	31.4%
Total	Count	408	2689	3097
	% within Does MP have Specialisation?	13.2%	86.8%	100.0%
	% within Ministerial Undertaking	100.0%	100.0%	100.0%

Further analysis of this data finds that the odds of a specialised backbench amendment receiving an undertaking from the government minister to reconsider an amendment between committee stage and report is 1.7 times higher than for an amendment from an unspecialised backbencher. However, more pertinent here are the occasions in which a change is made through other means (such as changes to the regulations accompanying a bill) and undertaking to table amendments at report. Here we find that the odds of a specialised backbencher receiving some form of other action from the minister are 18 times higher than for unspecialised amendments. For report stage commitments the odds are 22 times higher for specialised amendments than those originating from unspecialised backbenchers.

Therefore, at both the committee level and the amendment level there is a strong relationship between the level of specialisation and the frequency of ministerial undertakings to change, compromise, reconsider or table future amendments following committee stage. The viscosity of bill committees is thus increased significantly by the specialisation of committee members, particularly by specialised backbench MPs.

Case Study of Specialisation and Viscosity: The Housing and Regeneration Bill Committee

A practical demonstration of the relationship between specialisation and viscosity shows the difference that specialisation can make during a committee's consideration of a government bill. The Housing and Regeneration Bill Committee in the 2007-08 session illustrates this well. The committee itself was very highly specialised; all backbench MPs held some form of specialisation in the subject area and the minister noted that so many requests were made to be appointed to the committee by MPs that '[the Labour] party has been fighting them off⁵⁷²'. Of particular note was that the five backbench committee members included two former housing ministers - Nick Raynsford (Labour) and Sir George Young (Conservative) who were welcomed to the committee by the current Housing Minister Iain Wright 'with some trepidation,' as 'their experience ... is second to none'⁵⁷³ and one former Shadow Communities and Local Government Minister (Robert Syms). Three of the five backbench MPs were thus coded as having strong second hand specialisation. In addition, four backbenchers were coded as having strong first hand specialisation. *Table 23* displays a breakdown of the precise specialisation of each of these backbench MPs. Such was the specialisation of Nick Raynsford that he went so far as to apologise to the committee following his declaration of interests for delivering such a lengthy list⁵⁷⁴.

The committee put its very high level of specialisation to good use. A total of 56 backbench amendments were moved or grouped and discussed over the course of the seventeen sittings. This accounted for nearly 37 per cent of all non government amendments moved or discussed over the course of the committee⁵⁷⁵; over eight times higher than the average number of backbench amendments tabled across the decade as a whole.

⁵⁷² I Wright, *1st Sitting, Housing and Regeneration Bill Committee*, 11 December 2007, col. 3.

⁵⁷³ *ibid.*

⁵⁷⁴ N Raynsford, *1st Sitting, Housing and Regeneration Bill Committee*, 11 December 2007, col. 26.

⁵⁷⁵ Backbench amendments accounted for 36.6 per cent of all *non government* amendments.

Table 23. Backbench Specialisation in the Housing and Regeneration Bill Committee (2007-08)

Committee Member	First Hand Specialisation	Second Hand Specialisation
Andrew George (Liberal Democrat)	Board Member, Cornwall Rural Housing Association Charity worker, Rural development bodies 1981-97	None
Andrew Love (Labour)	None	Co-Chair, Homeslessness APPG
Nick Raynsford (Labour)	Chairman, Construction Industry Council Chairman, National Housebuilding Council Foundation Chairman, National Centre for Excellence in Housing Non-Executive Director, Hometrack Honorary Fellow, Royal Town Planning Institute Honorary Fellow, Royal Institute of British Architects Vice-President, Town and Country Planning Association Member, Notting Hill Housing Group Director of SHAC, the London Housing Aid Centre 1976-86 Former Director, Housing Consultancy	Minister, Office of the Deputy Prime Minister 2002-2005 Minister, Housing and Planning 1999-2001 Opposition Housing Spokesman 1993-1997
Robert Syms (Conservative)	Director, Property Company (1978 -) Member, North Wiltshire Enterprise Agency 1986-90 Fellow, Chartered Institute of Building	Shadow DCLG Minister 2003-07
Sir George Young (Conservative)	Former Member, Homes Board Chairman, Foundations Independent Living Trust Former Chair, Action Housing Association 1972-79 Vice-Chairman, Strategic Planning Authority 1970-73	Minister, Housing and Planning 1990-94

Not only were specialised backbenchers tabling an extremely large number of amendments but – as would be expected from the strong correlation between committee specialisation and ministerial undertakings, the milder constraints exerted by the committee were not insignificant. A total of 45 amendments (29 per cent) received some form of undertaking from the minister over the course of the committee. This compares to

an average of 7.6 per cent across the decade as a whole⁵⁷⁶. Particularly striking though - as *Table 24* demonstrates – is that two-thirds of these amendments had been moved by the five specialised backbench MPs.

Table 24. Ministerial Undertakings in the Housing and Regeneration Bill Committee

Position	Ministerial Undertaking			Total	
	Change Made	Reconsider	Report Stage Commitment	N	%
All Non Government MPs	9	28	8	45	100
Backbench MPs	4	20	6	30	66.7
Opposition Frontbench	3	6	2	11	24.4
Other*	2	2	0	4	8.8

*Includes those holding a PPS position but moving amendments (in this case due to constituency concerns)

Of these undertakings made to backbenchers, the overwhelming majority (25) were made in response to amendments tabled by Nick Raynsford, a backbencher with strong first and second hand specialisation. The minister himself described the contributions of Nick Raynsford to the committee debate as being ‘tremendous’ and ‘extraordinarily helpful to [him]’⁵⁷⁷ and thanked the MP for ‘helping to improve the bill through his contributions’⁵⁷⁸. In total, 87 per cent of the backbench amendments receiving ministerial undertakings had been tabled by backbenchers coded as having *both* strong first and strong second hand specialisation (Nick Raynsford and Sir George Young). Specialised backbenchers may have moved a smaller number of amendments than the frontbench spokesmen, but their impact on the bill and on committee viscosity was markedly more pronounced.

The legislative effect of these specialised backbenchers could also be seen far beyond the committee room. A significant proportion of these undertakings (46 per cent)⁵⁷⁹ were then acted upon by the government at the report stage of the bill. As Nick Raynsford himself noted, the introduction of amendments by the government in response to committee concerns is ‘the key test’⁵⁸⁰ for bill committee scrutiny. The government amendments introduced at report included making the sustainable development objective of the Homes and Communities Agency (HCA) more explicit⁵⁸¹, a series of amendments on social housing provision, committing the HCA to sustainable development and the clarification of

⁵⁷⁶ A total of 1846 amendments between 2000 and 2010 received some form of undertaking (change made, reconsider, report stage commitment or compromise) from the minister.

⁵⁷⁷ I Wright, *17th sitting, Housing and Regeneration Bill Committee*, 31 January 2008, col. 709.

⁵⁷⁸ *ibid.*

⁵⁷⁹ 12 out of 26 amendments coded as having an undertaking to reconsider or a report stage commitment saw a corresponding government amendment at report.

⁵⁸⁰ N Raynsford, *HC Debates*, 31 March 2008, col. 449.

⁵⁸¹ Amendments 16, 17 and 60 at report.

the position of tolerated trespassers, which saw the inclusion of a government new clause. The mark made on the bill by specialised backbench MPs was therefore extremely significant.

It should be noted here however that the proportion of backbench amendments receiving a corresponding government amendment at report stage during the passage of the bill is actually lower than the proportion of frontbench opposition amendments acted upon at report, the latter of which stood at 63 per cent. Given the volume of backbench amendments being moved, this still meant that the government responded to a greater number of undertakings to backbenchers than frontbench MPs. However, it suggests that whilst the specialisation of backbenchers leads to a greater number of backbench amendments being moved or discussed in committee and a greater number of ministerial undertakings to reconsider amendments or to redraft amendments for tabling at report stage of a bill, this is not necessarily the case for amendments introduced at report.

Members with No Specialisation

Although the impact of specialisation on the outcome of amendments seems formidable, it would be wrong to conclude that Members lacking any visible specialisation in a policy area make no contribution to the viscosity of a committee. They too can often exert a considerable degree of constraint over the content of government bills. Referring to these Members as ‘unspecialised’ may in itself be misleading. MPs may have a considerable interest in a policy area; they may have read and considered all of the leading reports and analyses of an issue and be thoroughly versed in its complexities. They may simply not have any previous career background in that area or hold any formal memberships which would highlight their interest and specialisation to others. Additionally as Judge notes, it is possible for a person to specialise in a field for a very short period of time. One ‘can be an expert in that field without being confined to it completely’⁵⁸². In this context the interest of an MP may have been sparked by the second reading debate of a bill in the chamber. The MP may then undertake detailed research in the policy area, contact the relevant outside organisations and attend the bill committee feeling well equipped to scrutinise the bill and to table amendments.

The success of amendments moved by so called ‘unspecialised’ MPs may therefore be due to considerable knowledge of the bill in question rather than of specialisation in the broad

⁵⁸² D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p. 110.

policy area as a whole. The success of amendments among these unspecialised members may also be attributed to the mentality of opposition. As Judge also notes, opposition committee members feel the need to 'harry the [government] on any and every, available opportunity'⁵⁸³. They may feel compelled to table large numbers of amendments. With such large numbers of amendments being tabled, it is only natural that some may in fact strike a chord with the government minister and lead to the formal acceptance of an amendment or some form of undertaking to reconsider.

Neither is it true that committees composed solely of those with strong specialisation in the policy area would necessarily be able to exert maximum levels of viscosity. The presence of at least some laymen may actually be a positive feature of bill committees. Such MPs may notice very simple or obvious errors in a bill which would otherwise be overlooked by more specialised Members. Furthermore, as one Government Minister notes 'we can't all be experts in everything and there aren't enough experts on every subject going around'⁵⁸⁴. It would thus be wrong to devalue the scrutiny work undertaken by unspecialised committee members; their presence is often very fruitful in ensuring the adequate scrutiny of government legislation.

Conclusion

Contrary to what many observers and academics note, evidence from the 2000-2010 period suggests that bill committees are indeed specialised. Whilst there is no suggestion here that they will ever be able to rival select committees in the breadth or depth of the specialist knowledge that they possess, the average bill committee has a specialisation level of 63 per cent. Most MPs, including ministers, can remember specialised bill committees on which they have participated without too much difficulty and note the excellent contributions of these members to committee debates. Members who possess some specialisation in a policy area are much more likely to table amendments for debate. This finding is in line with previous work. Kimber and Richardson for instance noted that 'it would seem likely that [specialists] contributed rather more than [non specialists]'.⁵⁸⁵ To refer to the earlier analogy posited by David Judge, the vast majority of members of contemporary bill committees are not wearing a scrutiny 'blindfold'. Rather, they are fully equipped with the policy awareness and knowledge to table relevant amendments and

⁵⁸³D Judge, *Backbench Specialisation in the House of Commons*, London: Heinemann, 1981, p. 94.

⁵⁸⁴ Government Minister, 24 November 2010, Interview with author.

⁵⁸⁵ R Kimber and J J Richardson, 1968, 'Specialization and Parliamentary Standing Committees', *Political Studies*, 16, 1, 1968, p. 101.

discuss even very technical issues persuasively with the government minister. Furthermore, ministers have conceded when interviewed that they are likely to pay greater attention to MPs with specialisation in a policy area than those without when it comes to giving undertakings to reconsider amendments and working on these amendments between committee stage and report. This bodes well for legislative viscosity.

The evidence presented here suggests that the hypothesis is not wholly wrong; committees and members with specialisation do on the whole appear to be able to exert greater viscosity. On average, committees seeing amendments formally accepted by the minister are more specialised. The evidence for this hypothesis is not however, overwhelmingly conclusive. Indeed, specialisation is not a guarantee of success. The most heavily amended bill of the whole session being scrutinised by a largely unspecialised committee. Where specialisation has the strongest effect is in the undertakings given by ministers in committee. This is particularly true for backbench MPs. The Housing and Regeneration Bill is a prime example of how committee scrutiny by experts on the backbenches can result in changes to government legislation, with significant changes being made as a result. Most significantly, amendments tabled by backbench MPs with specialisation are 22 times as likely to receive a commitment from the minister to table a corresponding government amendment at report than backbenchers with no specialisation.

There remain however, some areas of concern. The huge discrepancies in specialisation across committees cannot be wholly accounted for; methodological explanations about technical bills and very narrow policy areas are very valid but do not explain why very similar committees in different sessions can see such large differences in specialisation. Further analysis of the sessions would be needed to consider this. However, it seems fair to conclude that specialisation considerably boosts the capacity of bill committees and their members to exert viscosity through the form of milder constraints.

8. The Impact of Evidence Taking

Do Committees Make a Difference?

Whilst specialisation is a common variable affecting legislative impact in committees in any legislature there is one further variable to be considered which is important in the British context over this period. The reforms made to the standing committee system in 2006 in which the now renamed public bill committees were empowered to take written and oral evidence as standard procedure⁵⁸⁶ had the possibility have a significant impact on bill committee performance. At the time the change was described by Philip Cowley as being 'one of the most positive parliamentary reforms of the last fifty years'⁵⁸⁷ with 'the potential to do more to improve the quality of the parliamentary scrutiny of bills than any other Commons reform in the last twenty (or more) years'⁵⁸⁸. Jack Straw (Labour), then Leader of the House, was equally optimistic, describing the reforms as having 'the potential to deliver significant improvements to ... the effectiveness of the legislative process'⁵⁸⁹. Both politicians and academics were thus united in the opinion that evidence taking would have a positive impact on the work of bill committees. Detailed analysis of public bill committees in the 2007-2010 parliamentary sessions suggests that this initial outlook was correct; evidence taking has increased the information available to those scrutinising bills and has thus increased the capacity of bill committees to constrain the government.

The Introduction of Evidence Taking

Evidence taking in legislative committees is not new. Under Standing Order 91 'Special Standing Committees' were set up from time to time and empowered to hold up to three evidence sessions⁵⁹⁰ before the commencement of line by line scrutiny, though in practice very few bills were ever referred to them. Norton notes only five such committees sitting between 1980 and 1991⁵⁹¹ and in the current sample only one bill - the Adoption and Children Bill in the 2001-02 session was subject to this procedure.

⁵⁸⁶ All programmed bills from 2006 were eligible for evidence taking, with the exception of those starting in the House of Lords.

⁵⁸⁷ P Cowley, *The Guardian Online*, 2007.

⁵⁸⁸ P. Cowley 'Parliament', in A Seldon, (ed.) *Blair's Britain 1997-2007*, Cambridge: Cambridge University Press, p. 22.

⁵⁸⁹ J Straw, *HC Debates*, 1 November 2006, col. 304.

⁵⁹⁰ See Standing Orders 2003, accessed via <http://www.publications.parliament.uk/pa/cm200203/cmstords/175/17517.htm> (10 October 2012).

⁵⁹¹ P Norton, *New Directions in British Politics*, Aldershot: Edward Elgar, 1991, p.70.

Extending evidence taking powers so that they became standard bill committee procedure had long been advocated by Members. Those participating in Special Standing Committees frequently praised the evidence taking procedures. Government Minister Jacqui Smith for instance described the evidence sessions prior to the Adoption and Children Bill as giving Members ‘the opportunity to consider the Bill in detail and to receive information from stakeholders more effectively than would have been possible without it’⁵⁹². In his 2000 pamphlet ‘Mr Blair’s Poodle: An Agenda for Reviving the House of Commons’ Conservative MP Andrew Tyrie recommended that ‘ministers should be subject to more direct ... cross examination’⁵⁹³ and that ‘expert witnesses should also be called to comment on Bills’⁵⁹⁴. The report of the Commission to Strengthen Parliament, published in the same year, also recommended that ‘the use of special standing committees for examining bills should be the norm, not the exception, in the House of Commons’⁵⁹⁵. Similar recommendations have been made by the House of Lords Select Committee on the Constitution⁵⁹⁶. It was the Modernisation Select Committee’s report into the Legislative Process in 2006 that finally prompted the change when it noted that many of those submitting evidence favoured an evidence taking stage as normal standing committee procedure⁵⁹⁷. Four pieces of written evidence in particular, submitted by the Chairman of Ways and Means, The Hansard Society, The Centre for Public Scrutiny and Sir Nicholas Winterton (Conservative) made explicit recommendations that this procedure become the rule rather than the exception⁵⁹⁸. It was for this reason that the committee recommended the implementation of the procedure as standard practice:

“We recommend that Standing Order No. 83A (Programme motions) be amended so that the definition of ‘programme motion’ includes a requirement that it provides for committal of the bill to a public bill committee with the power to take evidence, to a Committee of the whole House, or split committal between the two.”⁵⁹⁹

Previous recommendations for a standardised provision of oral evidence taking had been met by opposition from the government. For instance, its response to the House of Lords Constitution Committee report of the 2003-04 session stated that it was ‘not convinced

⁵⁹² J Smith, *24th Sitting, Adoption and Children Bill Committee*, 17 January 2002, col. 934.

⁵⁹³ A Tyrie, *Mr Blair’s Poodle: An agenda for reviving the House of Commons*, London: Centre for Policy Studies, 2000, p. 2.

⁵⁹⁴ *ibid.*

⁵⁹⁵ Strengthening Parliament, *The Report of the Commission to Strengthen Parliament*, July 2000, p. 21.

⁵⁹⁶ The Legislative Process, *House of Lords Select Committee on the Constitution, 14th Report of Session 2003-04*, HL Paper 173-I, p. 36-37.

⁵⁹⁷ ‘The Legislative Process’, *Select Committee on the Modernisation of the House of Commons, First Report of Session 2005-06*, September 2006, HC 1097, p. 24.

⁵⁹⁸ Appendix 21 for a full list of these suggestions.

⁵⁹⁹ ‘The Legislative Process’, *Select Committee on the Modernisation of the House of Commons, First Report of Session 2005-06*, September 2006, HC 1097, p. 26.

that it would be appropriate to commit all bills which have not been scrutinised in draft to an evidence-taking committee after second reading'. Yet the reaction from the government – particularly Leader of the House Jack Straw – following the Modernisation Committee's 2006 report however, was much warmer. Straw described the proposed committee reforms as having 'the potential to deliver significant improvements to ... the effectiveness of the legislative process'⁶⁰⁰. The proposals were agreed by the House on 1 November 2006. All programmed bills introduced after the 2006 Christmas recess were thus eligible to take evidence under the new procedures, though the first bill to take oral and written evidence – the Local Government and Public Involvement in Health Bill Committee – had been introduced before this date⁶⁰¹. On this occasion oral evidence sessions were held as 'a gesture of goodwill and transparency'⁶⁰² on the part of the government. The Committee Chairman Joe Benton described how scrutiny would proceed under the new format:

"The Committee will first be asked to consider the programme motion on which debate is limited to half an hour. We shall then proceed to debate a motion to report to the House the written evidence that the Committee receives and a motion to permit the Committee to deliberate in private in advance of the oral evidence sessions. When the Committee has agreed its lines of questioning, the witnesses and members of the public will be invited back into the room and our oral evidence session will commence. If the Committee agrees to the programme motion, it will hear oral evidence this week before reverting to the more familiar proceedings of clause-by-clause scrutiny at subsequent sittings."⁶⁰³

All committee members would have the opportunity to put questions to witnesses during the evidence sessions. Just as committee members are unable to table amendments to a bill which would alter the fundamental principles agreed at second reading, the questions asked of witnesses are 'limited to the provisions of the bill'.⁶⁰⁴ It should be noted that although there are no provisions in the Standing Orders preventing bills originating in the House of Lords from receiving evidence at bill committee stage in the Commons, in practice no committee has yet taken evidence on such a bill. This is primarily due to the fact that the scrutiny process is largely thought to be complete, with most – if not all – of the key arguments, controversial issues and unintended consequences already having been identified and discussed during the bill's scrutiny in the Lords⁶⁰⁵.

⁶⁰⁰ J Straw, *HC Debates*, 1 November 2006, col. 304.

⁶⁰¹ P Woolas, *1st Sitting, Local Government and Public Involvement in Health Bill Committee*, 30 January 2007, col. 8.

⁶⁰² P Woolas, *1st Sitting, Local Government and Public Involvement in Health Bill Committee*, 30 January 2007, col. 9.

⁶⁰³ J Benton, *1st Sitting, Local Government and Public Involvement in Health Bill Committee*, 30 January 2007, col. 2.

⁶⁰⁴ *ibid.*, col. 14.

⁶⁰⁵ Clerk of Bills, 28 November 2012, Interview with author.

Evidence Taking in Practice

It would be fair to say that it took Members some time to become accustomed to the new committee procedures, including the change of name⁶⁰⁶. In the early days of the reforms the committee chair would be required to explain the procedures – often in some detail – for the benefit of Members before the oral evidence sessions began⁶⁰⁷. The usual procedure has been for committees to hold three or four oral evidence sessions before embarking on the more traditional line by line scrutiny. Whilst this is the traditional format for a committee empowered to take oral evidence there is ‘no procedural reason why it may not return to evidence-taking later in its consideration of the Bill’⁶⁰⁸. In some – but not all – cases Ministers also attend the evidence sessions in order to put questions to the witnesses.

A total of 47 committees in the sample were appointed following the introduction of the new procedures, with 25 taking both oral and written evidence⁶⁰⁹. The focus here will be on these 25 committees. The majority of these committees held four evidence sessions⁶¹⁰. Many witnesses and organisations gave evidence on more than one occasion, with six individuals giving evidence three times over the course of this relatively small number of committees⁶¹¹ and a small number of organisations could be said to have dominated proceedings. The Local Government Association was represented on 13 occasions whilst Liberty – the civil liberties and rights organisation and the CBI were each represented on nine occasions. All but six committees gathered oral evidence from at least one government minister, though more frequently they heard from more than one. The Welfare Reform Bill was unusual in that despite the fact that no fewer than three ministers were invited to give oral evidence, a further Minister remained on the committee and was

⁶⁰⁶ Members often incorrectly referred to bill committees as ‘standing committees’ over the course of the next two parliamentary sessions. See for example, C Spelman, *2nd Sitting, Local Government and Public Involvement in Health Bill*, 22 January 2007, col. 1161 and P Woolas, *14th Sitting, Local Government and Public Involvement in Health Bill Committee*, 1 March 2007, col. 443.

⁶⁰⁷ See for example the comments of Chairman J Benton, *1st Sitting, Local Government and Public Involvement in Health Bill Committee*, 30 January 2007, cols 2-3. See also N Winterton, *1st Sitting, Criminal Justice and Immigration Bill Committee*, 16 October 2007, col. 1.

⁶⁰⁸ A Burt, *1st Sitting, Local Government and Public Involvement in Health Bill Committee*, 30 January 2007, col. 5.

⁶⁰⁹ Most of the remaining committees, particularly in the initial 2006-07 parliamentary session received written evidence only. The majority of these bills originated in the House of Lords and so were not eligible for the oral evidence taking process.

⁶¹⁰ 17 of the 24 committees held four evidence sessions. Of the remainder, three committees held three evidence sessions and four held just two sessions.

⁶¹¹ Adrian Coles of the Building Societies Association, David Smith of the Energy Networks Association, Gareth Crossman of Liberty, Martin Narey of Barnardo’s, Nick Winsor of the National Grid, Simon Milton of the Local Government Association

thus available to ask questions of her colleagues⁶¹². Departmental officials were also a regular feature in the evidence sessions, accounting for 29 witnesses on 13 bill committees. As Huw Irranca-Davies (Labour) remarked, the presence of these departmental officials ensured that the committees had the benefit of the ‘full expertise’⁶¹³ of those involved in drafting the bill in question. In particular, officials would be much more able to respond to more technical and drafting queries regarding the Bill. Indeed, when appearing together, ministers have often deferred to the greater technical expertise of their departmental officials when responding to questions from committee members⁶¹⁴. In addition to this oral evidence, these twenty five committees received 805 separate pieces of written evidence.

The Potential for Oral Evidence to Enhance Committee Viscosity

In his 1994 discussion of the institutional variables affecting the viscosity of legislatures, Norton develops a series of committee characteristics which, if satisfied, would imply that committee viscosity was ‘maximised’⁶¹⁵. He analysed the presence of these characteristics in the committees of six European legislatures in a table which is replicated below.

⁶¹² See, *3rd Sitting, Welfare Reform Bill Committee*, 12 February 2009, col. 71. Government Ministers Tony McNulty (Minister for Employment and Welfare Reform, Department for Work and Pensions), Jonathan Shaw ((Parliamentary Under-Secretary of State for Work and Pensions) and Kitty Ussher (Parliamentary Under-Secretary of State for Work and Pensions) all gave evidence to the bill committee whilst Ann McKechnie (Parliamentary Under Secretary of State for Scotland) also attended the committee, though she asked no questions of her governmental colleagues.

⁶¹³ H Irranca-Davies, *1st Sitting, Flood and Water Management Bill Committee*, 7 January 2010 Col. 7.

⁶¹⁴ For example, during the evidence session of the Child Maintenance and Other Payments Bill Committee in the 2006-07 session Lord Mackenzie (Parliamentary Under Secretary of State at the Department for Work and Pensions) deferred to the knowledge of departmental official regarding the involvement of MPs in addressing their constituents’ problems with the child maintenance process. Lord Mackenzie, *1st Sitting, Child Maintenance and Other Payments Bill Committee*, 17 July 2007, Q19, col. 11.

⁶¹⁵ P. Norton, ‘The Legislative Powers of Parliament’, in Flinterman, A. Heringa, A W and Waddington, L (eds.), *The Evolving Role of Parliaments in Europe*, Antwerp: Maklu, 1994, p. 23.

Figure 10. Committee Characteristics Identified by Norton

	Italy	Denmark	Holland	Germany	UK*	France**
Characteristic						
Permanent	/	/	/	/	x	/
Small	/	/	/	x	/	x
Parallel existing bureaucracies	/	/	/	/	x	x
Exclusive Jurisdictions	/	/		x	/	x
Predominantly informed membership	/	/		/	x	/
Extensive powers of:						
evidence taking	/	/		/	x	/
amendment	/	/	/	/	/	x
agenda setting	/	/	/	x	x	x

Key: / = yes; x = no; blank = unknown

*Standing committees only. Select committees excluded

** Committees of enquiry and control excluded

Source: P Norton, 'The Legislative Powers of Parliament', in Flinterman, A. Heringa, A W and Waddington, L, *The Evolving Role of Parliaments in Europe*, Antwerp: Maklu, 1994, p. 24.

As can be seen in *Figure 10*, of the six legislatures included in the study, the UK appeared to rank fifth in terms of the capacity of its committees to constrain the Executive. Though House of Commons bill committees were small, with exclusive jurisdictions and had extensive powers of amendment they lagged behind their European counterparts. One key characteristic held by the committees in each other legislature studied but which was lacking in the UK was 'extensive powers of evidence taking'⁶¹⁶. Given that Norton notes that these powers are 'central to a committee if it is to enjoy a high degree of viscosity'⁶¹⁷ one would assume that the new procedures would see House of Commons bill committees exerting higher levels of constraint over measures of public policy.

It has already been noted that academics and parliamentarians themselves believed that the introduction of evidence taking procedures would enhance the scrutiny of legislation in committees. Two key areas were frequently cited; the use of oral evidence as an information providing tool and as a means of changing committee culture and behaviour during line by line scrutiny.

i) Oral Evidence as an Information Providing Tool

One of the common motivations for the introduction of oral evidence has been that evidence taking would boost the information and knowledge of Members. The Modernisation Committee argued for instance that it would ensure 'Members are informed about the subject of the bill and that there is some evidential basis for the debate

⁶¹⁶ P. Norton, 'The Legislative Powers of Parliament', in Flinterman, A. Heringa, A W and Waddington, L (eds.), *The Evolving Role of Parliaments in Europe*, Antwerp: Maklu, 1994, p. 24.

⁶¹⁷ *ibid.*, p. 26.

on the bill'⁶¹⁸. The language used in the drafting of bills is often highly technical and Members with no legal background often struggle to understand the terminology used or the precise practical meaning of a subsection of a clause. Most importantly, as Eleanor Laing (Conservative) points out 'not every member ... is a good enough academic lawyer and parliamentary draftsman to pick up every possible defect in the Bill from their own reading of it'⁶¹⁹. In theory, oral evidence would help to balance this somewhat; providing all members with a better insight into the meaning and implications of aspects of bills.

In addition, it was hoped that the measure would also increase the specific policy knowledge of ministers, forcing them to engage with the bill at a higher level than they may have done had they simply been relying on briefing notes put together by departmental civil servants. Jack Straw expressed his hopes that evidence sessions would force the minister taking a bill through committee 'to engage his brain about the detail and the wider policy'⁶²⁰. Oral evidence would act as the foundation for committee scrutiny, with Members being better informed of aspects of the bill and able to use the evidence from expert witnesses to support and further their arguments in debate.

ii) Oral evidence changing the behaviour of MPs during line by line scrutiny

It was also believed that evidence taking may change the behaviour of committee members, during the traditional line by line scrutiny stage. The Modernisation Committee foresaw two changes in behaviour: shorter debates and fewer 'probing' amendments⁶²¹. It is the latter which is of most interest here. Probing amendments are those designed to seek information or clarification. They are designed to elicit further discussion and debate and are, on the whole, withdrawn. Members tabling these amendments do not intend them to be accepted by the Minister in question. The Committee expected that the number of probing amendments would fall as Members would have 'an opportunity at the outset to question the Minister and officials on the bill'⁶²². Evidence taking committees would thus have a stronger reforming attitude; a greater proportion of amendments moved in committee would be those which were fully intended as improvements to the text of a bill.

⁶¹⁸ 'The Legislative Process', *Select Committee on the Modernisation of the House of Commons, First Report of Session 2005-06*, September 2006, HC 1097, p. 24.

⁶¹⁹ E Laing, *4th Sitting, Political Parties and Elections Bill Committee*, 11 November 2008, col. 124-5.

⁶²⁰ J Straw, *1st Sitting, Political Parties and Elections Bill Committee*, 4 November 2008, col. 20.

⁶²¹ 'The Legislative Process', *Select Committee on the Modernisation of the House of Commons, First Report of Session 2005-06*, September 2006, HC 1097, p. 29.

⁶²² *ibid.*

From a more theoretical viewpoint considering the factors which may affect viscosity across legislative committees as a distinct feature of the legislative process and in more practical terms, bill committees empowered to take oral evidence should have the potential to exert a greater amount of constraint; their Members should be more informed from the evidence sessions and have a stronger amending attitude during the traditional line by line scrutiny. One would expect viscosity to therefore be greater in the post 2006 parliamentary sessions.

Assessing Bill Committee Viscosity: Some Anecdotal Evidence

The initial impressions of the new public bill committees were not complimentary. One of the authors of the *Revolts* website noted in November 2008 that the best use was not being made of evidence sessions, with questions being too broadly focused and not always related to specific elements of the bill:

"Having sat in on one last week, it was clear that things could certainly be better. It wasn't just that the first ten or so minutes of an hour-long session with three academic experts was lost in a mass of points of order (these things happen), but that once the questions started they were too unfocussed. Too many were generalised, and fairly long-winded, discussions about the subject area. In other words, the committee was functioning a little bit too much like a standard select committee, asking generalised questions about the subject area, rather than focussing on the bill itself. It took at least half the evidence session until the questions began to focus in on specific parts of the bill. In addition to which there was the standard flaw with too many committee sessions: as so often, too many of the questions were overly long (as were some of the answers); very little of the questioning would have impressed Perry Mason."⁶²³

Neither have they been without controversy. Among other things, the government have been criticised for exerting too much control over the selection of witnesses⁶²⁴ and for reducing the number of evidence sessions⁶²⁵ during the scrutiny of some bills, with the Opposition describing themselves as being 'toothless'⁶²⁶; unable to add those witnesses who they feel would bring valuable evidence to the committee. Of most concern here is that the witnesses called to give evidence are – on the whole – those with whom the government will already have consulted during the drafting of the Bill. Perhaps the best example of this is the consideration of the Planning Bill in the 2007-08 session. Among the witnesses giving oral evidence were the Local Government Association, the Planning Inspectorate and the Confederation of British Industry, witnesses that one committee

⁶²³ 'Better than nowt, but still a missed opportunity', *Revolts*, 9 November 2008, accessed online at http://www.revolts.co.uk/cat_news.html

⁶²⁴ See for example S O'Brien, *HC Debates*, 18 February 2008, col. 114.

⁶²⁵ See for example A McIntosh, *1st Sitting, Flood and Water Management Bill Committee*, 7 January 2010, col. 3.

⁶²⁶ D Grieve, *1st Sitting, Counter Terrorism Bill Committee*, 22 April 2008, col. 8.

member described as being 'house trained'⁶²⁷. The minister did not argue with this accusation, stating that the department had indeed consulted with not just some, but 'all'⁶²⁸ of the witnesses giving evidence to the committee.

"All of the witnesses whom we have heard today—this will not surprise you—played an active part in the consultation and have been involved in detailed discussions with the Department, including in the run-up to the publication of the White Paper. Therefore, I am relatively familiar with many of the arguments that we have heard." ⁶²⁹

Despite this, one positive feature of the appointments process is that it allows the committee to understand the government's thinking on the key issues and – as will become apparent later – criticisms of the bill from 'insider' organisations who have worked closely with the government department may actually carry more weight. In a similar vein, some witnesses noted that they had already given evidence on a very similar topic to the relevant select committee. Martin Salter (Labour) for example described the oral evidence at the start of the Counter Terrorism Bill (2007-08) as being like 'Groundhog day'. Not only were the arguments put forward familiar but the bill committee had 'heard from the same people who gave evidence to the Home Affairs Committee'⁶³⁰. Of the 15 witnesses giving evidence to the bill committee, six⁶³¹ had already given oral evidence to the Home Affairs Select Committee's inquiry into 'The Government's Counter Terrorism Proposals'⁶³². Whilst some criticised the appearance of witnesses who had already given oral evidence to select committees, it is not necessarily detrimental to viscosity. Familiarity with government bills and the evidence taking process did not prevent witnesses from disagreeing with elements of government legislation. Evidence sessions therefore do not appear to have brought any additional value for the ministers attending committee or to select committee members serving on the bill committee. They appear to only provide members of the opposition and backbenchers with the opportunity to receive information and opinion which they may otherwise not have been aware of. In this way it can be seen as a non government tool through which to enhance the scrutiny of legislation. It helps to level the playing field of technical knowledge, allowing all committee members to approach a bill from a similar starting point.

⁶²⁷ D Curry, *4th Sitting, Planning Bill Committee*, 10 January 2008, col. 130.

⁶²⁸ J Healey, *4th Sitting, Planning Bill Committee*, 10 January 2008, col. 130.

⁶²⁹ *ibid.*

⁶³⁰ M Salter, *7th Sitting, Counter Terrorism Bill Committee*, 6 May 2008, col. 262.

⁶³¹ These witnesses were: Sir Ian Blair (Metropolitan Police Commissioner), Dr Eric Metcalfe (Director, Human Rights Police, Justice), Shami Chakrabarti (Director, Liberty), Sir Ken Macdonald QC (Director of Public Prosecutions, Crown Prosecution Service), Rt Hon Lord Goldsmith QC (former Attorney General) and David Ford (Head, Counter-Terrorism Bill Team, Home Office)

⁶³² The Government's Counter Terrorism Proposals, *Home Affairs Select Committee, First Report of Session 2007-08*, HC 43 – I.

Despite the concerns regarding the allocation of witnesses, the vast majority of Members have had nothing but praise for the new system. When interviewed they spoke of being 'impressed'⁶³³ by proceedings and described them as 'enjoyable'⁶³⁴, 'enlightening'⁶³⁵ and even 'quite exciting'⁶³⁶. There is also some evidence of a complete change in attitude towards bill committees. One Labour backbencher, due to stand down at the 2010 General Election stated shortly before that had she wished to remain in Parliament she 'would have volunteered for more public bill committees'⁶³⁷ as a result of her extremely positive experience serving on a committee which took oral evidence. Even ministers described the new committees as 'useful'⁶³⁸, 'constructive'⁶³⁹ and 'a valuable aspect of the scrutiny of the Bill'⁶⁴⁰.

Such is the recognition of the benefits of oral evidence that on occasions where the evidence taking procedure has not been used, Members have gone so far as to arrange their own evidence sessions. When the programme motion for the Offender Management Bill did not permit oral evidence to be taken, Opposition Spokesman Edward Garnier (Conservative) urged the government to allow the new procedure to be used during a Point of Order, stating that it would allow 'many issues'⁶⁴¹ relating to the contents of the bill to be resolved. The Minister refused, although the committee would later accept written evidence. Frustrated by this response, the opposition arranged their own evidence session, held the week preceding the first sitting of the bill committee⁶⁴². During this session three individuals were asked to give evidence and all committee members were invited. The witnesses were said to have given 'some very useful evidence that touched directly on the Bill'⁶⁴³. So valuable was this evidence to those participating that the Minister later agreed to try to get the session transcribed for the benefit of those unable to attend and to allow committee members to refer directly to the contributions of the witnesses⁶⁴⁴. A similar session was put together by members of the Mental Health [HL] bill in the same session, where a total of twenty five witnesses gave evidence over the course of one long evidence session:

⁶³³ Labour backbench MP, 10 May 2010, Interview with author.

⁶³⁴ Government backbench MP, 23 February 2010, Interview with author.

⁶³⁵ J Greenway, *20th Sitting, Pensions Bill Committee*, 21 February 2008, col. 599.

⁶³⁶ Labour backbench MP, 10 May 2010, Interview with author.

⁶³⁷ *ibid.*

⁶³⁸ P Woolas, *5th Sitting, Local Government and Public Involvement in Health Bill Committee*, 6 February 2007, col. 120.

⁶³⁹ V Coaker, *4th Sitting, Policing and Crime Bill Committee*, 29 January 2009, col. 99.

⁶⁴⁰ L Bryne, *14th Sitting, UK Borders Bill Committee*, 20 March 2007, col. 484.

⁶⁴¹ E Garnier, *HC Debates*, 11 December 2006, col. 584.

⁶⁴² For further details of this evidence session see *1st Sitting, Offender Management Bill Committee*, 11 January 2007, cols 5 – 7.

⁶⁴³ E Garnier, *1st Sitting, Offender Management Bill Committee*, 11 January 2007, col. 6.

⁶⁴⁴ G Sutcliffe, *1st Sitting, Offender Management Bill*, 11 January 2007, col. 9.

"Several members of the Committee decided to set up a witness session yesterday afternoon in Committee Room 16. There, for a marathon three and a half hours, 11 members of the House of Lords and the House of Commons, from the Conservative, Lib Dem and Welsh nationalist parties, and Cross Benchers—unfortunately no Labour Members were available to attend—scrutinised no fewer than 25 witnesses from an enormous range of organisations and individuals."⁶⁴⁵

Members of Parliament – particularly Opposition spokesmen - evidently believe that there is much value in the new procedure. The fact that on both occasions it has been the Opposition who have gone to great lengths to arrange these evidence sessions implies that they must feel they bring great benefit; one which will enhance their ability to scrutinise a government bill effectively.

One benefit of evidence taking stands out above all others: the enhancement of the policy knowledge of committee members. As James Plaskitt (Labour) noted during the Child Maintenance and Other Payments Bill Committee (2007), the evidence sessions help Members 'to hit the ground running'⁶⁴⁶. When interviewed Labour backbencher Willie Bain told how he had 'found out a good deal more about the regulation of credit cards and the credit market'⁶⁴⁷ from the witnesses giving evidence to the Financial Services Bill Committee (2009-10), placing him in a much stronger position to debate the measures in the bill during the line by line scrutiny.

Not only do evidence sessions put the issues raised by the bill into context, the opportunity to acquire more detailed knowledge of policy issues has in turn enhanced the quality of bill committee debates. Mike O'Brien (Labour) noted in the concluding sitting of the Pensions Bill Committee (2007-08) that the result of the oral evidence was that 'the quality of the debate from both sides has been particularly good'⁶⁴⁸. Despite complaints from some Members regarding the selection of witnesses, the additional information provided by the new evidence taking powers has proved beneficial to committee members and bodes well for viscosity. Anecdotal evidence from committee members therefore suggests that oral evidence has had a considerable impact. Consideration of the indicators of viscosity used previously will allow comparisons to be made between evidence taking committees and those following the more traditional standing committee format.

⁶⁴⁵ T Loughton, *1st Sitting, Mental Health (HL) Bill Committee*, 24 April 2007, col. 8.

⁶⁴⁶ J Plaskitt, *3rd Sitting, Child Maintenance and Other Payments Bill Committee*, 19 July 2007, col. 89.

⁶⁴⁷ Government backbench MP, 23 February 2010, Interview with author.

⁶⁴⁸ M O'Brien, *20th Sitting, Pensions Bill Committee*, 21 February 2008, col. 596.

Measuring Public Bill Committee Viscosity: Number of Amendments Tabled

As noted previously, the number of formal amendments may not be the best indicator of viscosity in the context of the House of Commons, but it is the most visible element of committee work when comparing committees before and after the 2006 reforms.

The number of government and non government amendments moved or discussed in committee across the full sample averaged 125 and 49 per bill respectively. The government were therefore tabling over twice as many amendments as all other committee members combined. If one breaks the committees within the sample into a standing committee period (covering all committees taking place between 2000 and 2006) and a public bill committee period (covering all committees taking place between 2007-2010)⁶⁴⁹ it becomes apparent that the number of amendments being moved or discussed in committee has actually fallen. Committee members and government ministers are tabling fewer amendments in the post 2006 period than previously. Alongside oral evidence taking committees, the 2007-2010 sample contains bill committees taking only written evidence and a small number of committees taking no evidence at all. If one considers only those committees taking oral evidence from witnesses, the number of amendments being moved and discussed jumps considerably, averaging 168 non government and 79 government amendments. Therefore, although the post 2006 period as a whole has seen a reduction in the frequency of amendments, a much greater number of amendments than previously are being tabled in those committees which have taken oral evidence.

Table 25. Impact of Evidence Taking on Amendments Moved in Committee

Parliamentary Sessions	Number of amendments discussed in committee			
	<i>Non government Amendments Total</i>	<i>Average per bill</i>	<i>Government Amendments Total</i>	<i>Average per bill</i>
Standing Committees (2000-2006)	11769	129	4950	54
Public Bill Committees (2007-2010)	5699	119	2372	49
Committees taking Oral Evidence	4194	168	1987	79

⁶⁴⁹ No bill committees sat in the initial part of the 2006-07 session. The first committees sat in January 2007. The Adoption and Children Special Standing Committee is excluded here.

If these non government amendments are broken down further, a total of 308 backbench amendments were moved over the course of the 25 evidence taking committees, averaging 12 per government bill. The number of opposition amendments stands at 3,886 or an average of 155 per bill (see Appendix 22). This is also a significant increase compared to the average within standing committees and across the decade as a whole. The average number of opposition and government backbench amendments tabled per bill across the sample is only 125. Opposition MPs in particular are tabling a much higher number of amendments following oral evidence sessions.

Measuring Public Bill Committee Viscosity: Success of Formal Amendments

Members of evidence taking public bill committees may be more active, tabling much higher numbers of amendments, but this enthusiasm for tabling amendments is not matched by greater success in committee in terms of the number of non government amendments accepted formally by the minister (see *Table 26*). Indeed, the 25 committees taking oral evidence saw just seven amendments accepted by the minister in committee. This includes a substantive amendment made during the Flood and Water Management Bill Committee (2009-10) to reinsert the role of Flood Defence Committees in approving Environment Agency expenditure in a particular region⁶⁵⁰ and several minor drafting amendments⁶⁵¹.

Although three quarters of all successful amendments *since* the 2006-07 session have therefore been in evidence taking committees, the actual number of successful amendments is very low, even by British standards. This is particularly evident given that there were 89 successful non government amendments between 2000 and 2006. Committees in the 2007-2010 period have therefore been dramatically less successful at ensuring the passage of non government amendments.

⁶⁵⁰ See *8th Sitting, Flood and Water Management Bill Committee*, 19 January 2010, col. 281.

⁶⁵¹ These include the replacement of "shall" with "may" in Clause 156 of the Local Government and Public Involvement in Health Bill Committee (16th Sitting) and the replacement of "justified" with "justifiable" in the Coroners and Justice Bill Committee (11th Sitting).

Table 26. Successful Non Government Amendments

Type of Committee	Successful Non Government Amendments		Type of Amendment	
	<i>N</i>	<i>Average per session</i>	<i>Managerial (N)</i>	<i>Substantial (N)</i>
Standing Committees (2000-2006)	89	15	66	23
Public Bill Committees (2007-10)	8	2	6	2
Committees taking oral evidence	6	1.5	5	1

Thus whilst the old standing committee format saw an average of 15 successful non government amendments per parliamentary session, the figure for public bill committees is just two. Evidence taking may have prompted government backbenchers and opposition MPs to table more amendments, but it appears to have had a detrimental effect on the number of these amendments being accepted.

This implies a low level of viscosity. However, the low numbers of successful non government amendments could be related to the increase in the number of government amendments being made. As *Table 27* shows, committees taking oral evidence see a much greater number of government amendments being moved⁶⁵². Indeed, the 25 evidence taking committees account for 28 per cent of *all* government amendments tabled across the 2000-2010 period⁶⁵³.

Table 27. Government Amendments in Committee

Type of Committee	Government Amendments Made in Committee	
	<i>Total</i>	<i>Average per Bill</i>
Oral Evidence Taken*	1717	69
No Oral Evidence Taken**	5388	47

*25 committees

**114 committees

There is evidence that government amendments are frequently introduced in bill committee as a direct result of the oral evidence sessions. In particular, amendments have often been prompted by questions asked by committee members during the evidence sessions. This was observed in the Local Government and Public Involvement in Health Bill Committee with three government amendments being prompted by questions from

⁶⁵²Government amendments averaged 69 per bill in oral evidence taking committees compared to 46 per bill for those taking no oral evidence.

⁶⁵³ Evidence taking committees make up just 18 per cent of the full sample (2000-2010).

Andrew Stunell MP (Liberal Democrat) 'on second reading and during the evidence-taking'⁶⁵⁴ sessions. His questions prompted the government to introduce amendments covering the gate keeping role of local councils and the Audit Commission. The Government minister noted that the government had 'listened to the arguments put to us'⁶⁵⁵ in the evidence sessions. In this way viscosity is being exerted by a bill committee in that its members are prompting the government to make formal changes to legislation, it is simply not being recorded formally as such in committee.

Neither is it uncommon for the government to note during the course of bill committee evidence sessions that they are considering or will now consider tabling an amendment in committee. In the Pensions Bill Committee for example the minister noted that he 'may need to table amendments' to clarify⁶⁵⁶ elements of the financial assistance scheme. Such undertakings are often acted upon in committee. The rise of government amendments in evidence taking committees may therefore be commendable. It is perhaps an indication that the government are responding to the evidence given by witnesses in response to questions posed by committee members.

Measuring Public Bill Committee Viscosity: Milder Constraints

The impact of oral evidence sessions is not limited to formal amendments; it can also be identified in the undertakings given by ministers in committee. Indeed, the milder constraints exerted by public bill committees is substantial; a total of 769 ministerial undertakings were given to 1151 amendments over the 2007-2010 period. These figures themselves appear very impressive, particularly compared to almost insignificant numbers of successful formal amendments. Once again, it is the committees taking both oral and written evidence (referred to from here onwards simply as oral evidence taking committees or evidence taking committees) which are of most interest.

The 25 oral evidence taking committees in the sample account for 53 per cent of the public bill committees within the post 2006 sample. Despite this, they received well above this proportion of ministerial undertakings across the 2007-2010 period (see

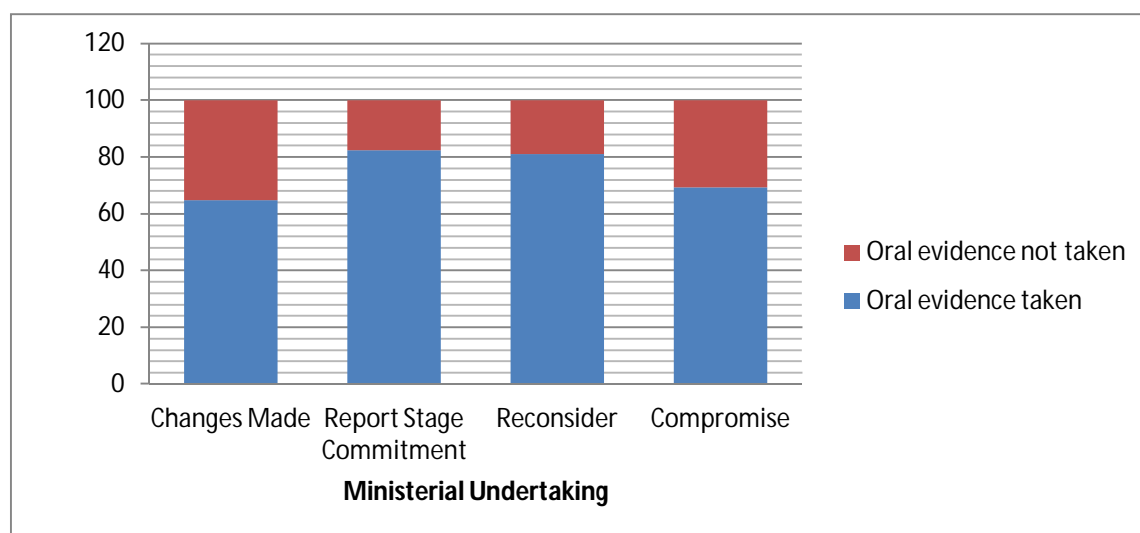
⁶⁵⁴ P Woolas, *13th Sitting, Local Government and Public Involvement in Health Bill Committee*, 1 March 2007, col. 419.

⁶⁵⁵ P Woolas, *12th Sitting, Local Government and Public Involvement in Health Bill Committee*, 27 February 2007, col. 401.

⁶⁵⁶ M O'Brien, *4th Sitting, Pensions Bill Committee*, 17 January 2008, col. 122.

Figure 11). This includes 83 per cent of all report stage commitments given by ministers and 81 per cent of the undertakings to reconsider an amendment between committee stage and report.

Figure 11. Ministerial Undertakings Given in Public Bill Committees 2007-2010



The figures across the decade as a whole are equally impressive. Committees taking oral evidence account for only 17 per cent of the bill committees studied in the full sample. Yet in terms of the number of ministerial undertakings given in these committees, they punch well above their weight. Oral evidence taking committees received 25 per cent of all individual undertakings made by ministers across the decade. The number of amendments receiving an undertaking⁶⁵⁷ underlines this even further, with those committees taking oral evidence accounting for 34 per cent of the amendments receiving some form of undertaking. Clearly, there is something about evidence taking committees which makes them more conducive to ministerial undertakings.

Table 28 offers a breakdown of these undertakings, displaying the average number of undertakings in each category given by ministers within the sample. Two features of this table are worthy of further attention. Firstly, the number of changes made through other means such as the regulations accompanying a bill is much lower in evidence taking committees. Secondly – and of greater importance – the number of undertakings to reconsider an amendment or to table a government amendment at the report stage of the bill is much greater in those committees holding oral evidence sessions. Whilst ministers

⁶⁵⁷ Some undertakings may refer to more than one amendment (for instance where an amendment has a consequential amendment attached), hence the number of undertakings and the number of amendments on which an undertaking has been given are different.

may be less likely to make non-legislative changes to a bill in evidence taking committees, they are in fact much more likely to commit to or to agree to consider making a legislative amendment to a government bill.

Table 28. Ministerial Undertakings Given Per Bill (2000-2010)

Committee Type	Average Number of Undertakings given per Bill			
	<i>Change Made</i>	<i>Report Stage Commitment</i>	<i>Reconsider</i>	<i>Compromise</i>
No Oral Evidence Taken	1.6	0.8	3.9	0.8
Oral Evidence Taken	1.3	1.3	7.4	1.4

Committees which take oral evidence therefore see a much greater number of ministerial undertakings. The impact of oral evidence can also be seen at the report stage of government bills.

Table 29 illustrates a breakdown of government amendments at this later stage. It shows that firstly, committees taking oral evidence see a slightly higher number of government amendments at report stage which have been tabled in response to undertakings made by ministers. An average of ten government amendments are moved in response to committee in those taking no oral evidence, but this rises to 12 for those in which an oral evidence session has been held. Secondly, a small effect can be seen in terms of the substantiveness of the resulting change. There is little difference in the number of managerial government amendments at report in response to committee, but the number of substantial amendments being tabled is considerably higher, rising from just 1.7 in those committees taking no oral evidence to 2.8 in those that do. Oral evidence sessions are thus prompting the government to make a greater number of changes at the report stage of a bill in response to bill committee discussions and these amendments are more likely to address issues of a substantive nature. They are not simply clarifying drafting errors in the bill; they are making fundamental changes to government legislation.

Table 29. Government Amendments at Report which Respond to Bill Committee

Type of Committee	Government Responses to Committee		Level of Amendment	
	Average Number	Proportion of Government Amendments (%) ⁺	Managerial	Substantial
Oral Evidence Taken	12	53	9.0	2.8
No Oral Evidence Taken	10	47	8.4	1.7

⁺ Calculation only includes those bills which received a report stage and in which government amendments were made.

NB: All figures have been rounded

This could be seen in the report stage of the Equality Bill. Whilst moving a new clause to the bill⁶⁵⁸ Government Minister Vera Baird described how oral evidence had prompted the government to amend the bill and table an amendment at report.

“The Committee heard compelling evidence from disability organisations that disabled people are being discriminated against by having their initial applications rejected by some employers once those employers are aware of a person's disability. It also heard that the widespread use of pre-employment inquiries can act as a deterrent to some disabled people making applications for work. The Royal Association for Disability and Rehabilitation, for instance, told us that restricting the use of pre-employment inquiries ‘is probably the single biggest difference and improvement that could be made through the Equality Bill in relation to the employment of disabled people’. In the light of that evidence, we are convinced of the need to legislate to deter employers from asking health-related questions and using the information gained for discriminatory purposes”.⁶⁵⁹

The amendment itself was therefore substantive, making a significant change to the Bill. It allowed for employers to be called to account for discriminatory job interview and selection practices, for example, by asking candidates questions regarding health or disability and then failing to consider these candidates on the basis of their responses. If candidates subsequently complained about their treatment to an employment tribunal the burden of proof would fall on the employer. It would be for them to prove that the candidate had not been discriminated against, rather than falling on the candidate themselves to prove that the discrimination occurred. It was a significant change, one which would ‘strengthen the burden of proof in favour of the disabled person’ and which was prompted directly by the oral evidence.

⁶⁵⁸ New Clause 40 - Enquiries about Disability and Health

⁶⁵⁹ V Baird, *HC Debates*, 2 December 2009, col. 1120.

Explaining Greater Viscosity: Behavioural Changes in Evidence Taking Committees

The key findings in relation to oral evidence taking bill committees are therefore a fall in the number of formal amendments being accepted in committee and in the number of compromises and changes to secondary legislation made by ministers, but an increase in the total number of amendments being tabled and in the number of undertakings to reconsider an amendment or to table a government amendment at report. There are three principal behavioural changes in these evidence taking committees which may underpin these changes. They suggest that committee members are utilising evidence taking procedures to enhance the potential for committee viscosity.

- i) *MPs use oral evidence sessions as a guide to the issues they will raise in committee and cite the testimony of witnesses to support their amendments*

In many respects the oral evidence sessions lay the foundations of the scrutiny process, with the areas of concern highlighted by the witnesses helping to form the agenda for line by line scrutiny. As Mark Hoban (Conservative) noted in the Banking Bill Committee (2008-09), evidence sessions set ‘the framework for debate in Committee and [highlight] some of the important issues’⁶⁶⁰ which the committee then goes on to discuss.

Table 30. Use of Oral Evidence Sessions during Line by Line Scrutiny

	Amendments prompted by oral evidence*		Evidence cited in support of amendments ⁺	
	Government	Non government	Oral Evidence	Written Evidence
Public Bill Committees 2007-2010	13	102	448	15
Health and Social Care Bill Committee	0	12	44	1

*Those in which the mover has explicitly stated the amendment(s) are a response to oral evidence

⁺Includes debates on government and opposition amendments

Members will use the opinions expressed and information provided in the evidence sessions to reinforce the arguments they make in committee, or to provide examples to strengthen their case. *Table 30* shows a breakdown of how frequently oral evidence is directly used by members of a committee. It demonstrates that members cited oral evidence in support of 448 amendments in these 25 committees. Even government

⁶⁶⁰ M Hoban, *17th Sitting, Banking Bill Committee*, 18 November 2008, col. 547.

ministers have occasionally used oral evidence in response to the discussion on amendments⁶⁶¹. This behavioural change has not gone un-noticed by committee members who noted that having the weight of outside experts leads to 'better debates'⁶⁶², making their arguments on individual amendments more forceful and convincing. When interviewed one Shadow Minister described how the evidence of experts adds additional 'moral' pressure on a government minister, making it much more difficult for them to resist changes to a bill:

"If the Government are doing something that is evidently wrong and if the oral evidence is from eminent people who've put it very persuasively, it becomes very difficult for the minister to continue to argue that what he is doing is right when it obviously isn't. So yes, I think it puts a lot of moral pressure on the minister to go to his Secretary of State and to discuss with [the Whips], to see if he can make some concessions."⁶⁶³

In this way a direct link can be seen between the oral evidence sessions and the increase in the number of ministerial undertakings made during line by line scrutiny. Expert evidence is drawn upon by committee members when making the case for their amendments. Government ministers feel under greater pressure to make more concessions than they may otherwise have made.

ii) Members use evidence sessions as a means of deciding whether additional amendments to a government bill are needed

It is not just the committee debate itself that the oral evidence sessions are helping to guide and inform; there is also evidence that Members use these initial sessions as a means of deciding whether amendments to a government bill are needed and therefore as an amendment-writing tool. Jonathan Djanogly (Conservative) stated during one committee that he felt the purpose of evidence sessions was 'to see whether we needed to take amendments to the Bill as a result'⁶⁶⁴ whilst Eleanor Laing (Conservative) has stated that the 'very purpose' of having expert witnesses before committees was so that 'we might benefit from their wisdom and experience and therefore table amendments'⁶⁶⁵.

A more detailed analysis of these committees suggests there is much truth to these comments. Committee members have cited oral evidence as being the reason behind their

⁶⁶¹ This occurred on ten occasions 2007-2010.

⁶⁶² D Green, *5th Sitting, UK Borders Bill Committee*, 6 March 2007, col. 137.

⁶⁶³ Government backbench MP, 3 November 2010, Interview with author.

⁶⁶⁴ J Djanogly, *3rd Sitting, Political Parties and Elections Bill Committee*, 6 November 2008, col. 64.

⁶⁶⁵ E Laing, *4th Sitting, Political Parties and Elections Bill Committee*, 11 November 2008, col. 124-5.

amendment on 102 occasions and have on many more occasions asked the Chair to consider starred amendments, which they have tabled at short notice following the evidence sessions⁶⁶⁶. The authoritative nature of the evidence frequently compels MPs to table additional amendments to address the points raised. A good example of this is the actions of Damian Green (Conservative) during the UK Borders Bill Committee, following evidence given by Liberty, the civil liberties organisation, in the evidence sessions. After hearing their evidence he felt obligated to table two amendments for consideration during the line by line scrutiny⁶⁶⁷. When moving his amendment he acknowledged the impact of Liberty's oral evidence during the committee discussions:

"Some of my remarks on these amendments arise from the evidence that we heard. It would be extremely useful to show that taking witness evidence helps us to have better debates during the scrutiny stage of the Bill."⁶⁶⁸

Another pertinent example of this activity occurred during the committee stage of the Child Poverty Bill. Steve Webb (Liberal Democrat) moved an amendment regarding the power given to the Secretary of State to abolish the Child Poverty Commission. He explained that he had not noticed this when examining the Bill himself, but had been alerted to the issue by a witness during the oral evidence sessions.

"I had not planned to table the amendment ... but the subject arose during the evidence sessions. I must admit that I had not noticed that, which is why I had not tabled an amendment on the subject"⁶⁶⁹.

It is not simply that MPs are taking on board the evidence presented by outside experts and considering tabling relevant amendments in committee. The experts themselves frequently offer suggestions for amendments directly over the course of the evidence session. Although these suggestions usually refer to specific amendments, on other occasions witnesses have recommended areas the committee should discuss or probe further over the course of line by line scrutiny. When giving evidence before the Local Government and Public Involvement in Health Bill Committee, Sally Brearley of the organisation Health Link noted that 'probing is required during Committee stage of the Bill to ensure that the Government give adequate commitments in respect of their stated intentions'⁶⁷⁰ regarding the possibility of LINKs being able to enter premises where NHS

⁶⁶⁶ "See for example A Tyrie, *1st Sitting, Political Parties and Elections Bill Committee*, 4 November 2008, col. 3.

⁶⁶⁷ D Green, *5th Sitting, UK Borders Bill Committee*, 6 March 2007, col. 165.

⁶⁶⁸ *ibid.*, col. 137.

⁶⁶⁹ S Webb, *6th Sitting, Child Poverty Bill Committee*, 27 October 2009, col. 191.

⁶⁷⁰ S Brearley (Witness), *2nd Sitting, Local Government and Public Involvement in Health Bill Committee*, 30 January 2007, col. 63.

services were being delivered⁶⁷¹. Often a witness or organisation will highlight a problem with a piece of legislation when cross examined in committee which did not feature in their written evidence. This occurred in the Political Parties and Elections Bill (2008) where a witness from the Electoral Commission highlighted an important issue that might arise from clauses 4 – 7 of the Bill regarding the failure or refusal of a political party to appoint a commissioner, but which had not been discussed in any of the written evidence submitted by outside experts⁶⁷².

In instances such as this, oral evidence acts as a crucial amendment forming tool which both assists committee members in performing their scrutiny role and which provides another channel of influence for outside organisations and experts. Questions do not have to be impressive, nor – to use the term coined by the Revolts website – do the MPs asking the questions need to be comparable to Perry Mason, in order to be effective and have influence on the line by line scrutiny stage. There is no need for Members to try and embarrass government ministers or find fault with the testimony of witnesses as may occur in the confines of a select committee. The arena of the bill committee is thus highly conducive to effective legislative scrutiny.

iii) Committee members use evidence sessions to trail amendments that they intend to table to the bill

It is not only new amendments that evidence sessions provide assistance with. MPs use the oral evidence sessions as a tool through which to ‘trail’ amendments they have already tabled to government bills, using the information provided to increase the evidence that can be deployed to further their cause in committee. As one government minister noted when asked about his experiences of giving evidence to committees ‘a lot of the questioning seems to be from MPs who want an answer to support something that they want to argue later on’⁶⁷³. Whilst the questions directed at expert witnesses and government officials are often exploratory and a means of increasing understanding about ambiguous aspects of a government bill, they frequently serve an additional purpose, providing a reference point which committee members can use to add weight to the amendments they have already tabled when debating them during the line by line scrutiny of the bill.

⁶⁷¹ See also *2nd Sitting, Pensions Bill Committee*, 15 January 2008, col. 51.

⁶⁷² See *3rd Sitting, Political Parties and Elections Bill Committee*, 6 November 2008, col. 64.

⁶⁷³ Government Minister, 3 March 2010, Interview with author.

During the oral evidence session of the Energy Bill Committee (2009-10) Conservative MP Tobias Ellwood referred explicitly to one of his amendments in a question to the minister, Joan Ruddock. Whilst enquiring about the possibility of including one demonstrator gas power station in the Bill in addition to coal power stations, he stated that 'there is an amendment'⁶⁷⁴ on the issue. He was therefore able to highlight an amendment that he had tabled, whilst having an initial opportunity to question the minister on the issue. Despite the minister responding that 'there is a whole raft of reasons why we believe we should not'⁶⁷⁵ include gas power stations in the bill, the MP was able to build on his arguments for use in the later scrutiny by the committee. In this case Mike Weir (SNP) moved five amendments to remove restrictions in the Bill which restricted demonstration products to coal. When talking to these amendments he directly cited the questions asked to the minister during the evidence sessions⁶⁷⁶. Questions such as this are not of the 'generalised'⁶⁷⁷ nature noted by early critics of the system. They are detailed and focused on a particular Member's amendment, with the fundamental aim of gathering additional evidence to be deployed during line by line scrutiny.

Probing Amendments in Committee

In addition to these behavioural changes, the Modernisation Committee hoped that the introduction of evidence taking would reduce the number of probing amendments moved during line by line scrutiny. Probing amendments are those tabled with the aim of clarifying a particular section of the bill, of extracting information or generating further discussion and debate on an issue arising from it. Very rarely is such an amendment tabled with the intention of formally amending a government bill. The movers would not expect to receive any firm undertakings from the minister and would not usually seek to divide the committee on the issue. A reduction in the number of probing amendments would increase the time available in committee for substantive amendments to be debated and would suggest that bill committees were of a more amending frame of mind.

⁶⁷⁴ T Ellwood, *4th Sitting, Energy Bill Committee*, 7 October 2009, col. 110.

⁶⁷⁵ J Ruddock, *4th Sitting, Energy Bill Committee*, 7 October 2009, col. 110.

⁶⁷⁶ M Weir, *6th Sitting, Energy Bill Committee*, 12 January 2010, col. 178.

⁶⁷⁷ 'Better than nowt, but still a missed opportunity', *Revolts*, 9 November 2008, accessed online at http://www.revolts.co.uk/cat_news.html

Table 31. Probing Amendments Moved or Discussed in Bill Committees

Committee Type	N	Probing Amendments	
		Proportion of Non Government Amendments*(%)	
Standing Committees 2000-2006	2950	26	
Public Bill Committees 2007-2010	1249	22	
Evidence Taking PBCs	833	21	
Non Evidence Taking PBCs	416	24	

*Figures rounded

In the few months following the procedural changes there was a very noticeable change in the number of probing amendments being moved. As *Figure 12* demonstrates, the proportion of probing amendments falls from a peak in the 2004-05 session to nearly one third of this level. Whilst an average of 22 per cent of all non government amendments in the 2000-2006 period were coded as being probing amendments, in the 2006-07 parliamentary session the comparable figure is just 15 per cent⁶⁷⁸. The decline in the number of these amendments was noted at the time by Jessica Levy, who suggested that it was a sign of a 'far more fruitful committee process'⁶⁷⁹.

The main explanation for a fall in the number of these probing amendments would be that questioning during the evidence sessions often takes the form of a probing or enquiring nature and negates the need to 'tag' a query to an amendment for the purposes of acquiring a response from a minister in committee. As David Laws noted in the Pensions Bill Committee it can 'save on some of the probing amendments that we often have to table in order to flush out ministerial thinking'⁶⁸⁰. The format of questions from MPs, particularly those directed at ministers, often seek information on the meaning of a clause or of a small change made to the text of a bill. For instance when Jim Knight appeared before the Education and Skills Bill Committee in January 2008 he was asked probing questions regarding the definition of the term 'reasonable excuse'⁶⁸¹ in the context of local authorities making suitable provisions for young people. As John Greenway notes the prevalence of these questions can mean that 'a lot of the foxes that we might have run with were shot by some of the evidence that we received'⁶⁸². In this way evidence sessions may

⁶⁷⁸ This includes 172 probing amendments over 5 bill committees

⁶⁷⁹ J Levy, 'Public Bill Committees: An Assessment – Scrutiny Sought; Scrutiny Gained', *Parliamentary Affairs*, 63, 3, 2010, p. 539.

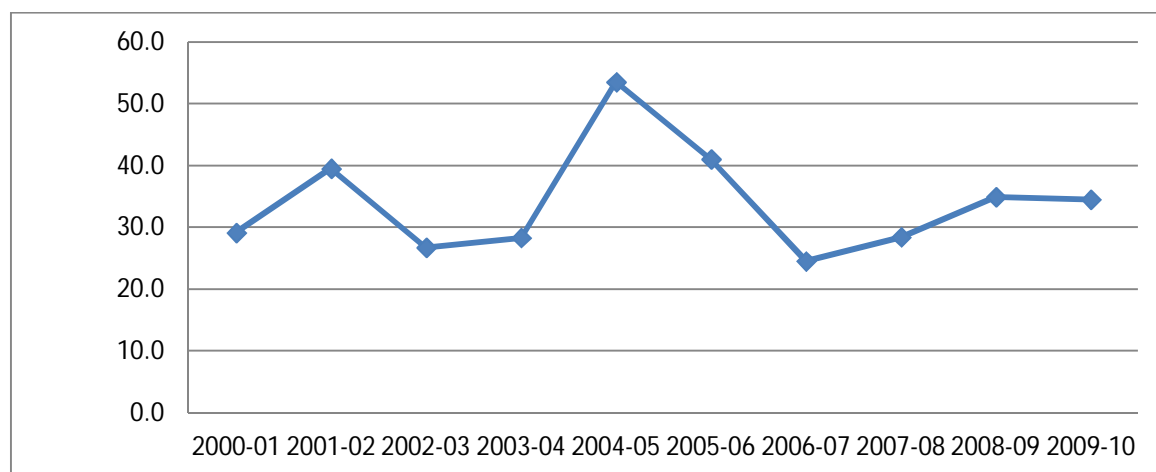
⁶⁸⁰ D Laws, *1st Sitting, Pensions Bill Committee*, 23 January 2007, col. 9.

⁶⁸¹ *6th Sitting, Education and Skills Bill Committee*, 29 January 2008, col. 209.

⁶⁸² J Greenway, *20th Sitting, Pensions Bill Committee*, 21 February 2008, col. 599.

have a filtering effect on the type of amendments tabled by opposition and backbench MPs.

Figure 12. Probing Amendments by Parliamentary Session



However, although the initial period of oral evidence taking committees saw a significant fall in the frequency of probing amendments, there has been a gradual increase in their use from the 2007-08 session. It is not clear why the number of probing amendments has risen once more, though one could hypothesise that the additional arena in which to question a minister is just that; additional to the further opportunities to probe ministers in committee. It may simply be that MPs are utilising the oral evidence taking procedures to probe ministers, but are using their responses to probe further in bill committee. Whatever the reason, there is no evidence to suggest that this has a detrimental effect on committee viscosity. It may simply be that committee behaviour initially changed with the introduction of evidence taking sessions, but then reverted to the earlier norm.

Case Study of Viscosity in an Evidence Taking Committee: The Health and Social Care Bill (2007-08)

The 2007-2010 parliamentary sessions therefore provide much evidence to support the notion that evidence taking public bill committees have a greater capacity to constrain the government than their predecessors. More detailed consideration of one of these committees shows precisely the impact that oral evidence can have upon legislative viscosity.

The Health and Social Care Bill was introduced in the 2007-08 parliamentary session and was designed to establish 'improved and integrated regulation of the health and social care system as well as enhancing the regulation of health professionals who work within it'⁶⁸³. The Bill created the Care Quality Commission, a new health and adult social care regulator in England from the merger of the Mental Health Act Commission, the Healthcare Commission and the Commission for Social Care Inspection, which would have the power to investigate cases where providers fail to meet safety and quality requirements. Although the government minister noted that the Bill had "broad support across the House"⁶⁸⁴ the Opposition expressed concerns during the Bill's second reading in the House regarding the lack of 'any formal structure to give a voice to patients and the users of services'⁶⁸⁵. Sixteen MPs were appointed to the bill committee⁶⁸⁶ which sat for twelve sittings in January 2008⁶⁸⁷. Three of these sittings were reserved for oral evidence. A total of 21 witnesses were called before the committee including representatives from the British Medical Association, General Medical Council, the Mental Health Act Commission and the Healthcare Commission⁶⁸⁸. Complementing this oral evidence was a substantive body of written evidence; 35 written submissions were accepted by the committee. This included submissions from bodies which would later be called to give oral evidence, but also included other outside organisations such as the Royal College of Nursing and the General Optical Council.

Evidence of much of the behaviour highlighted previously can be identified in these evidence sessions, often with significant consequences. Most relevant here are the occasions in which witnesses highlighted key areas of concern which they wished the bill committee to focus on during the line by line scrutiny and more specific changes which were requested to be made to the Bill. In the initial evidence session, Dame Denise Platt, Chair of the Commission for Social Inspection, asked that the committee members 'look at the proposals in terms of both health and social care and, specifically, the new enforcement powers in the Bill'.⁶⁸⁹ She also highlighted the lack of a requirement to publish inspection reports. In the second evidence session Sandra Gidley (Liberal Democrat) expressed concern that committee members may be 'missing an opportunity'⁶⁹⁰ and asked Lady Justice Smith (Judicial Office) whether there were any

⁶⁸³ A Johnson, *HC Debates*, 26 November 2007, col. 37.

⁶⁸⁴ B Bradshaw, *HC Debates*, 26 November 2007, col. 101.

⁶⁸⁵ A Lansley, *HC Debates*, 26 November 2007, col. 45.

⁶⁸⁶ Excluding the government minister Steve McCabe.

⁶⁸⁷ The committee sat from the 8th January – 24th January 2008.

⁶⁸⁸ See Appendix 14 for a full list of witnesses and written submissions.

⁶⁸⁹ D Platt, *1st Sitting, Health and Social Care Bill Committee*, 8 January 2008, col. 7.

⁶⁹⁰ S Gidley, *2nd Sitting, Health and Social Care Bill Committee*, 8 January 2008, col. 37.

other changes she would like to see made to the Bill. She replied by raising one area of particular concern, noting that it was one 'which you might feel is quite small'⁶⁹¹. This was the definition of professionally qualified members who are selected to serve on fitness to practice panels:

"I suspect that the provision means medically qualified people, but that is not made clear. I would like it to be made clear that there can be legally qualified people on the panels. As the way in which the panels are to work will be decided by the Office of the Health Professions Adjudicator, not by Parliament—reference can be made to an example, under clause 94(6), of the delegated legislation rules that are to be made by OHPA—I should like the OHPA at least to have the option of having legally qualified chairs. If you want me to give reasons why I think that that is a good idea, I shall do so, but they are set out in my report. I believe in horses for courses and in professional expertise being matched to the nature of the tasks in hand. Chairing a disciplinary tribunal is a job for a legally qualified person, not a lay person."⁶⁹²

This 'throw away'⁶⁹³ question asked towards the end of an evidence session would have a substantial impact on the bill committee and on the text of the Bill. The issue of legally qualified chairs had not been raised by anyone during the Bill's second reading debate on the floor of the House or from any other briefings which Members had been sent. It was a completely new and previously unforeseen problem in the drafting of the bill, yet 'ended up being something that exercised a great deal of time in Committee⁶⁹⁴'. Not only were committee members spending time discussing the issue, they were tabling amendments to deal with the point raised by Lady Justice Smith and were regularly quoting her comments during the debate.

An amendment was tabled by Shadow Minister Stephen O'Brien (Conservative) to insert the precise phrase - 'legally qualified' into the text of the Bill - something which had been directly suggested during the oral evidence⁶⁹⁵. On several occasions when putting forward the case for his amendment he directly referred to the evidence given by Lady Justice Smith, noting how – following her evidence to the committee – he had pressed the Minister on the issue:

"In her oral evidence, Lady Justice Smith brought out the issue of having if not legally qualified chairs, at least a legally qualified person on the panel, which would fit into the Bill most obviously at clause 93(2). While clause 96 makes provision for a legal assessor, there is no requirement for fitness to practise panels to have a legal assessor in full-time attendance. During my examination of the Minister in an evidence-taking session, he said

⁶⁹¹ Lady Justice Smith, *2nd Sitting, Health and Social Care Bill Committee*, 8 January 2008, col. 37.

⁶⁹² *ibid.*

⁶⁹³ S Gidley, *HC Debates*, 18 February 2008, col. 99.

⁶⁹⁴ *ibid.*, col. 100.

⁶⁹⁵ Amendment 204 was tabled to Clause 93 - Fitness to practise panels. The text of the amendment was as follows: in clause 93, page 46, line 6, after 'a' insert 'legally qualified'.

that the Government would be willing to look at the issue of legally qualified chairs and were 'certainly happy to go away and think a bit further about that' if there was wide concern in the Committee."⁶⁹⁶

Following the discussion of the amendment in committee, the government minister pointed out that legally qualified chairs would not be required in every occasion but that the government would reconsider the matter and table a corresponding amendment at report stage to address these concerns and to clarify the issue during the departmental evidence session:

"There may be cases where it is not necessary to have a legally qualified chair, but what we are trying to do, and what we will try to do on Report, is to think about the matter and bring back something that will meet the concerns raised by hon. Members and by Lady Justice Smith, without putting the new, independent adjudicator in the position where it has to have a legally qualified chair for every case."⁶⁹⁷

This change alone demonstrates the value of oral evidence sessions in strengthening bill committees. But this was not the only example of the significance of oral evidence. As *Table 32* demonstrates, one fifth of the non government amendments moved or discussed in committee were supported in some way by the oral evidence. Members speaking to these amendments directly cited pieces of oral evidence to support their case as they tried to persuade the minister of the value of their amendment. At least six per cent of the non government amendments also appeared to have been prompted by specific pieces of oral evidence. Sandra Gidley for example quoted the evidence given by the representatives from *Which?*, the consumer group in relation to her tabling of amendments 7a and 129 during the committee's fifth sitting. These amendments were intended to ensure that cosmetic surgery and treatments would fall within the remit of the Care Quality Commission. She noted that the *Which?* representative had described how 'the administration of dermal fillers, including some that are semi-permanent and permanent, of Botox injections and of such things as chemical peels do not come under the Healthcare Commission's remit'⁶⁹⁸. There was also one occasion where written evidence was cited by committee members and one amendment which had been prompted solely by the written evidence submitted to the committee⁶⁹⁹.

⁶⁹⁶ S O'Brien, *9th Sitting, Health and Social Care Bill Committee*, 22 January 2008, col. 373.

⁶⁹⁷ B Bradshaw, *9th Sitting, Health and Social Care Bill Committee*, 22 January 2008, col. 376.

⁶⁹⁸ F Blunden, *2nd Sitting, Health and Social Care Public Bill Committee*, 8 January 2008, col. 76.

⁶⁹⁹ Greg Mulholland quoted written evidence from the National Childbirth Trust regarding his amendment (123) to make the proposed pregnancy grant payable to women from the sixteenth week of their pregnancy, rather than during the last two months.

Table 32. Impact of Oral Evidence on Line by Line Scrutiny - Health and Social Care Bill

Use of Oral Evidence	Number of Amendments	Proportion of Non Government Amendments
Cited by Mover of Amendment	45	21.6%
Prompted Amendment to be Tabled	13	6.2%
Minister Prompted to Reconsider by Oral Evidence	1	0.4%

Interestingly, all of the examples cited here and compiled in *Table 32* relate to opposition amendments. Not a single government backbencher cited any of the oral evidence given to the committee over the course of line by line scrutiny, despite their enthusiastic participation in the oral evidence sessions. This is in fact very similar to the pattern found across all evidence taking committees. Of the 576 occasions in which oral evidence has been used in some way during the line by line scrutiny – either through amendments being tabled as a direct result of oral evidence or of oral evidence being cited by the mover of the amendment – 484 have related to opposition amendments. Just seven per cent of occasions involved a government back bencher. Oral evidence sessions are thus very much a tool of the opposition MP.

The reasons for this are twofold. Firstly, it relates to the lack of resources available to opposition MPs when scrutinising government legislation. With very few – if any – of Members' own staff engaged in detailed scrutiny of the relevant government bill it is very difficult for the opposition to table substantive, non probing amendments in bill committees. Oral evidence sessions provide valuable assistance here, highlighting particular aspects of the bill which may be vague, drafted incorrectly or which may have unintended consequences. Opposition MPs can then take up these matters, drafting relevant amendments and tabling them in committee in full knowledge that the issue is one which the minister and other committee members will now be somewhat familiar with. Every single amendment coded as being prompted by an oral evidence session (i.e. one in which the mover credits oral evidence for alerting them to an issue) over the full sample of evidence taking committees has been moved by an opposition MP. Secondly, government backbench MPs are likely to have more success in committee than opposition MPs. Government ministers will inevitably be predisposed towards an amendment from one of its own backbenchers than from the opposition parties. It was noted earlier that government backbench amendments have a higher success rate than those emanating from the opposition benches. Oral evidence can therefore provide opposition MPs with

valuable debating tools; citing evidence from an authoritative witness will undoubtedly strengthen the case for making their proposed change to the bill. In this way, although oral evidence is of value to all involved, it becomes particularly valuable to opposition members.

MPs themselves also raised specific amendments over the course of the evidence session that they themselves had tabled for consideration during the line by line scrutiny. Stephen O'Brien (Conservative) for example raised an amendment he had tabled which called for a 'review to Parliament on a regular, and indeed annual, basis'⁷⁰⁰. He received direct feedback on the amendment from Chris Heginbotham, a representative of the Mental Health Commission who suggested that whilst the amendment would be helpful, 'it perhaps either does not go far enough or is a slightly different issue'⁷⁰¹.

When the Minister, Ben Bradshaw, appeared before the committee, committee members made good use of the opportunity to probe areas of concern which, had they not done so, would most likely have been tabled in the form of an amendment for discussion during line by line scrutiny. Sandra Gidley for instance asked for more information regarding the 28 day period in which organisations are able to respond to the Commission following notification of a suspended or cancelled registration. In particular, she asked whether this was 'not too long a period of time?'⁷⁰². This question could quite easily have been asked as a result of a probing amendment during the line by line scrutiny, most likely with an amendment to reduce the 28 day period.

Whilst the impact of the oral evidence sessions could be seen during the line by line scrutiny in terms of the frequent citations given by committee members, it is at the report stage of the Bill that the impact of oral evidence becomes overwhelmingly clear. One feature of the Bill in particular was changed at report through government amendments; the issue of legally qualified chairs referred to earlier. Stephen O'Brien tabled two further amendments on the issue at report⁷⁰³, though these amendments were withdrawn as a result of government amendments being moved. The Government had taken the concerns expressed during the oral evidence sessions and in committee on board and had come back at report with a series of amendments to address Members' concerns. When speaking

⁷⁰⁰ S O'Brien, *1st Sitting, Health and Social Care Bill Committee*, 8 January 2008, col. 10.

⁷⁰¹ C Heginbotham, *1st Sitting, Health and Social Care Bill Committee*, 8 January 2008, col. 10.

⁷⁰² S Gidley, *3rd Sitting, Health and Social Care Bill Committee*, 10 January 2008, col. 96.

⁷⁰³ Amendments 82 and 85 tabled at report stage. The full text of the amendment was as follows: page 47, line 7, at end insert 'or the legally qualified members list'.

to the government amendments, Ben Bradshaw described how he thought that the evidence given by Lady Justice Smith had 'warranted further thought'⁷⁰⁴ and stressed that the government amendments were a direct response to this. He described the changes being made to the Bill as 'a good example of how the evidence-giving process is adding value to the system of parliamentary scrutiny'⁷⁰⁵. Thus, not only had the process of evidence taking uncovered an issue which had not previously been considered by Members or outside organisations, committee members took the issue on board, pressuring the minister during his oral evidence session and during the committee debate itself by tabling amendments. The combined work of Lady Justice Smith and the opposition MPs in this committee brought about a significant change to the wording of the government bill; a change which otherwise would probably not have been made. Oral evidence had undoubtedly enhanced the committee's capacity to constrain the government and to exert viscosity.

In total 18 government amendments made at the report stage of this Bill were clear responses to issues raised by the committee. Fifteen of these were those in which oral evidence had contributed in some way. This represented 28 per cent of all of the government amendments tabled at report. The oral evidence sessions had therefore been valuable in three distinct ways. Firstly they had been crucial as an information providing tool – offering more detailed information to Members on controversial issues within the Bill and on areas of the Bill where greater clarification or redrafting was needed. Secondly, this provided a crucial reference point for committee members when speaking to their amendments in committee. Finally –and perhaps most importantly – they increased the pressure on the government minister to address Members' concerns, with the vast majority of government amendments introduced at report stage being prompted by the oral evidence sessions. During the third reading debate the government minister described how 'the Bill benefited from the evidence giving process'⁷⁰⁶. Oral evidence had very clearly enhanced the capacity of the bill committee to exert viscosity and constrain the government. The Health and Social Care Bill left the House of Commons in an amended form and this was a direct result of the oral evidence sessions held by the bill committee.

⁷⁰⁴ B Bradshaw, *HC Debates*, 18 February 2008, col. 94

⁷⁰⁵ *ibid.*

⁷⁰⁶ B Bradshaw, *HC Debates*, 18 February 2008, col. 112.

Conclusion

The procedural changes made to bill committees in the 2006-07 parliamentary session have had an enormous impact upon the scrutiny process itself. Despite the initial concerns expressed in the early months of the reforms, evidence sessions are supporting the scrutiny role of MPs, enhancing their ability to constrain the government through information provision and greater technical and legal understanding. This has led not only to better informed and higher quality debates, but to more informed scrutiny, with amendments which are more topical and motivated by a desire to amend and improve legislation rather than as a partisan debating tool.

Most importantly however, they have had an equally significant impact upon the outputs of the scrutiny process. The outputs of committees taking oral evidence are substantially greater than those which have taken no evidence and this is most apparent in terms of the undertakings given by government ministers. Evidence taking committees account for the majority of undertakings made by ministers to reconsider amendments following committee stage and of the firm commitments to table a government amendment at the report stage of the bill in question. The high levels of constraint exerted by these committees can be related to the behavioural changes observed. In particular, oral evidence sessions are prompting Members to table amendments on practical issues which they had not previously been aware of and committee members are able to refer directly to the comments of these expert witnesses when speaking to the amendment – and to the government minister – in committee. Testimony from ministers supports the view that this increases the pressure on the government to reconsider issues and to make legislative amendments.

One must therefore concur with the comments of one backbench MP that ‘there’s no doubt that having the public bill committee has made a real improvement to the committee stage of legislation’⁷⁰⁷. Oral evidence acts as an information providing and amendment prompting tool and significantly boosts the capacity of a bill committee to constrain the government, prompting concessions on amendments which otherwise may not have been made. The final hypothesis is therefore correct; oral evidence is increasing viscosity. This bodes well for the future work of bill committees in the House of Commons.

⁷⁰⁷ Government Backbench MP, 23 February 2010, Interview with author.

9. Conclusion

Do Committees Make a Difference?

Although the ‘tasks of legislatures change with the times’⁷⁰⁸, adapting to meet the needs of the modern world, the requirement for effective scrutiny of government legislation remains. As a core function of legislatures⁷⁰⁹, it is unlikely that this will ever be removed from the very core of the legislative process. Despite their relatively short history in the British Parliament, bill committees have proved themselves to be a worthy and necessary scrutiny tool. Regardless of what has been written or contended about them, their presence endures. This thesis has attempted to demonstrate why bill committees are so essential to the House of Commons; crucial to the detailed scrutiny of government bills on the one hand and to the efficient despatch of government business on the other. It has tried to bring a new dimension to the study of bill committees in the House of Commons and a greater appreciation of their legislative impact through the application of Jean Blondel’s concept of legislative viscosity.

Findings Grounded in a Strongly Empirical Study

This thesis has taken a strongly empirical approach throughout. As Norton notes, this approach is ‘informed by an appreciation of what is and can be rather than necessarily what is formally prescribed and what should be. It has been concerned with the political reality of law-making rather than the formal provision’⁷¹⁰. This is particularly important in the context of the House of Commons, a legislature in which strong distinctions must be made between the theoretically possible and the practically realisable. The empirical analysis of the 137 bill committees and over 24,000 amendments has thus served as the foundation of the study. Although interviews have been sought with Members of Parliament and parliamentary officials, all findings noted here are rooted in the actual experiences of these pieces of government legislation as they make their way through the bill committee process. There is therefore a strong quantitative evidence base for each of the hypotheses.

⁷⁰⁸ S H Beer, ‘The British Legislature and the Problem of Mobilizing Consent’, as reprinted in P Norton (ed.) *Legislatures*, Oxford: OUP, 1990, p. 62.

⁷⁰⁹ Robert Packenham includes the ability of a legislature to both introduce legislation and to modify recommendations from the executive branch within the ‘law making’ function of a legislature. See R A Packenham, ‘Legislatures and Political Development’, in P Norton (ed.), *Legislatures*, Oxford: OUP, 1990, p. 90.

⁷¹⁰ P Norton ‘The Legislative Powers of Parliament’, in Flinterman, A. Heringa, A W and Waddington, L (eds.), *The Evolving Role of Parliaments in Europe*, Antwerp: Maklu, 1994, p. 30-31.

In some respects the methodological approach taken here is consistent with previous studies of the legislative process in the UK. In others, it adopts an approach more commonly associated with other legislatures. The former is demonstrated through the amendment coding process; the use of committee transcripts and the recording of very simple amendment counts is as far as possible a replication of the methodology employed by John Griffith. Although the means by which viscosity has been recorded and measured is by no means unique in the British context, the use of this quantitative data as a means of assessing the input variables of specialisation and oral evidence taking is more in fitting with studies of committees in other legislatures; particularly those considered to be more powerful and influential than the British Parliament.

Although the technique of measurement used here is by no means perfect, the analysis of ministerial undertakings offers a much more accurate presentation of bill committee impact than the consideration of formal amendments alone and allows a more comprehensive analysis of committee behaviour than would be possible through more detailed case studies of individual bills. The manner in which amendments have been coded was designed to underestimate rather than overestimate the impact of bill committees on legislation. It is hoped that this brings greater legitimacy to the findings.

Contribution to the Field of Legislative Studies

The contribution of this research to legislative studies and in particular to existing research on legislative committees can be summarised in two broad areas; the descriptive and the analytical. In descriptive terms the findings detailed here stand as the first truly comprehensive presentation of bill committee work since the eminent study by John Griffith in 1974. Although other studies offer thorough analyses of case study bills, the decade of committee scrutiny presented here covers a much broader period and includes a greater number of committees than has been analysed before.

It is thus a useful tool through which to compare even the most basic changes in the work of bill committees, changes which until now have not been visible outside the committee corridor. This includes the vast increase in the workload of bill committees and their members. Not only is committee scrutiny taking up an ever increasing proportion of the parliamentary timetable, but committees are processing a much greater number of

government and non government amendments.⁷¹¹ In addition it provides updated evidence of frequently cited measures, particularly the frequency of successful non government amendments and the defeat of government amendments and casts doubt on the notion that bill committees have low levels of specialisation.

The analytical contribution made to the field of legislative studies and in particular to the study of committees in legislatures is four-fold. Firstly, the thesis offers a model by which to analyse the work and impact of bill committees in the very archetype of an arena legislature. In doing so it bridges a gap in the literature whereby bill committees in the British Parliament were often excluded from comparative analysis. It demonstrates that an analysis of committee impact in the UK can be made in quantitative terms and that this can include both the frequencies of formal amendments passed in committee and through the analysis of ministerial undertakings. One must no longer rely on anecdotal evidence of contemporary bill committee output from selected participants in autobiographies and interviews.

Secondly, it illustrates that the principle of legislative viscosity established by Blondel *et al.* can be applied at a committee level. To refer once more to the metaphor used by Norton, the evidence presented here proves that not only do bill committees have the capacity to interrupt the stream of government legislation, but that they perform these interruptions on a regular basis. One in every five government bills leaves committee with at least one successful non government amendment. However, viscosity manifests itself more frequently in a less tangible form, through the undertakings made by ministers in response to amendments tabled by opposition and government backbench MPs. One in six amendments to government bills see some form of undertaking from the government minister. Whilst the stream of legislation has continued to flow in all cases – its passage is slowed somewhat; amendment is required as bills move through their committee and report stages in the House of Commons.

Viscosity is not however most apparent at the committee level. As the thesis demonstrates, analysis of committee sittings alone severely underestimates the viscosity of bill committees. It is only at the report stage of legislation that the result of the undertakings given by ministers during committee stage can be seen. Not only are changes to government bills much more likely to be made at this point of the legislative process; they

⁷¹¹ For further comparisons of this sample of committees with those studied by Griffith see L Thompson, 'More of the Same or a Period of Change? The Impact of Bill Committees in the Twenty-First Century House of Commons', *Parliamentary Affairs*, 2012; doi: 10.1093/pa/gss016.

are also likely to be more substantive than those changes conceded by ministers in the confines of bill committees themselves. In this way, the Vehicles (Crime) Bill Committee of the 2000-01 session would have been regarded as being relatively powerless had one examined the bill committee in isolation. To quote Walkland, in this respect bill committees are often 'forums for Government change rather than instigators of change themselves'⁷¹². Only when the report stage of the bill is analysed does the true effect of committee stage as a change inducing body become apparent.

Thirdly, the research finds strong evidence that specialisation has an impact on the output of bill committees. Although not a prerequisite for effective scrutiny, amendments tabled in committee by MPs with specialisation in the policy area are much more likely to see ministerial undertakings to reconsider or to table a government amendment at the report stage of the bill. The arguments presented in committee by these Members – particularly backbench MPs - carry more weight with government ministers, hence nearly two thirds of all amendments discussed in bill committees come from those with a strong specialisation in the policy area. A sense of camaraderie develops among specialised MPs who serve on the same bill committees and select committees over several parliamentary sessions. This produces more constructive and less partisan scrutiny of government bills. The viscosity of bill committees is thus greater where MPs are strongly specialised.

Fourthly – and perhaps most relevant in practical terms – the thesis offers firm evidence that the reforms made to the bill committee system in 2006, particularly the introduction of oral evidence sessions prior to line by line scrutiny, have been a very positive development which has increased the capacity of bill committees to constrain the executive. By highlighting ambiguous aspects of legislation, facilitating the drafting of amendments and acting as an additional source of information, oral evidence sessions have meant that MPs are better equipped to scrutinise government bills effectively. Committees which have taken oral evidence see a greater number of amendments being tabled and discussed and a considerably greater number of undertakings to reconsider amendments and to table government amendments at report are being made by ministers.

The Viscosity of Bill Committees in the House of Commons

Whilst the thesis presents much evidence as to the viscosity of individual bill committees and the variables which affect the levels of viscosity exerted, some consideration must be

⁷¹² S A Walkland, 'Committees in the British House of Commons', in J D Lees and M Shaw (eds.), *Committees in Legislatures*, Oxford: Duke University Press, 1979, p.261.

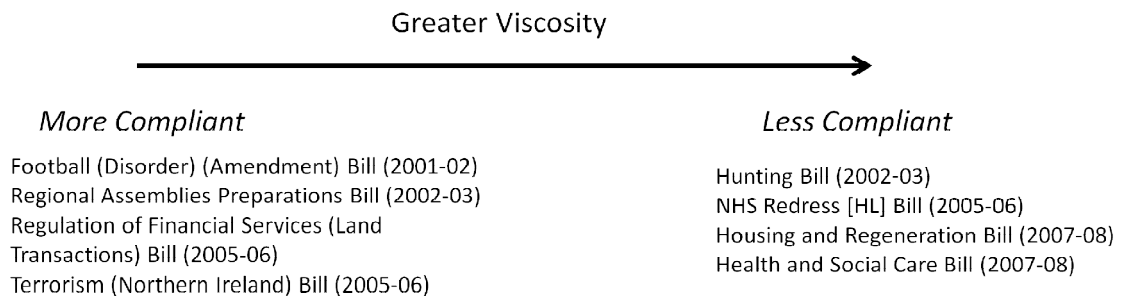
given as to the precise value of viscosity found in bill committees as a distinct feature of the parliamentary process.

Blondel *et al.* referred to viscosity not as a dichotomous rule, but as a continuum. At one end would be placed those parliaments considered to be 'compliant' whilst at the opposing end would be those considered to be 'free'. Parliaments could be placed along the continuum in relation to the number of amendments which were made to bills, the time spent debating government legislation and the frequency of successful private members' legislation. In theory it would be possible to place the individual bill committees studied here along this continuum, with those making a greater number of changes or those making more substantive changes to government legislation being considered to be less compliant than those making very few or no changes.

However, given the nature of the British parliamentary system noted over the course of this thesis and thus the context in which bill committees operate, it is unlikely that a committee would ever truly be considered to be 'free'. The overwhelming majority of amendments can only be made by negotiation with the relevant government minister. A slightly modified continuum would have greater utility here; one which considers those committees which are simply 'more compliant' and those which are 'less compliant'. Committees could therefore be positioned according to the number of amendments accepted by the minister during committee stage, the number of undertakings made and the frequency of government amendments at report stage in response to committee discussions.

Figure 13 demonstrates this amended continuum of viscosity and makes a very basic distinction between individual bill committees within the sample. The case studies utilised throughout the thesis are good illustrations of those committees which would fall towards the 'less compliant' end of the spectrum whilst other bills such as the Regional Assemblies (Preparations) Bill would fall towards the 'more compliant' end of the spectrum. A more precise ordering of committees along this spectrum would be possible, certainly as far as individual indicators of viscosity are concerned. It would be possible for instance to order committees along the spectrum in terms of the number of successful amendments, ministerial undertakings received or by the number of amendments introduced at report in response to committee. Combining all of these indicators into a single figure and therefore a single position along a continuum would be more difficult to do objectively.

Figure 13. The Viscosity of Bill Committees 2000-2010



Furthermore, just as it is unlikely that any legislature will be completely 'free' or completely 'compliant', it would be inaccurate to place bill committees as a scrutiny mechanism in such a position either. When describing the positioning of parliaments along this continuum Blondel *et al.* note that there are two positions in the middle where opposition amendments would be passed with the assent of government⁷¹³. This is perhaps the best position in which to locate contemporary bill committees. They are not the subservient and compliant bodies that MPs and academics have generally considered them. The combination of a relatively low level of successful formal amendments and the much greater number of ministerial undertakings resulting in amendments means that they cannot accurately be described as being 'compliant'. Rather they fall some way towards the middle of the continuum, making changes to government legislation often through the medium of the government frontbench. This chimes with much earlier work which suggested that bill committees are 'not of overshadowing importance'⁷¹⁴. Some committees are evidently of greater importance than others in terms of the constraint they can exert.

Furthermore, the comparison of the data collected here with John Griffith's study and the analysis of the introduction of oral evidence sessions as a standard committee procedure demonstrates how legislative viscosity and thus the position of committees within this continuum can – and does - change over time. The viscosity of bill committees has arguably fallen from the level identified by Griffith in the 1970s. Modern bill committees appear more compliant in terms of the number of successful amendments. The 2006 committee reforms however, appear to have at least brought the potential for bill

⁷¹³ J Blondel *et al.*, 'Legislative Behaviour: Some Steps towards a Cross National Measurement', *Government and Opposition*, 5, 1, 1970, p. 80.

⁷¹⁴ E Taylor, *The House of Commons at Work*, Middlesex: Penguin, 1951, p. 165.

committees to move along the spectrum once more. Norton's table of the characteristics of committees which influence legislative viscosity referred to in earlier chapters could be amended (see *Figure 14*) to include the 'extensive powers of evidence taking' now available to UK bill committees. Whilst they would still languish some way behind Italy and Denmark in Norton's table, they would arguably now be on a level with those in the German Bundestag in terms of powers and capacity. Although the best use is not being made of evidence sessions at present, this change has given UK bill committees the potential to maximise their viscosity and move further towards the 'less compliant' end of the spectrum.

Figure 14: Amended Committee Characteristics

	Italy	Denmark	Holland	Germany	UK*	France**
Characteristic						
Permanent	/	/	/	/	x	/
Small	/	/	/	x	/	x
Parallel existing bureaucracies	/	/	/	/	x	x
Exclusive Jurisdictions	/	/		x	/	x
Predominantly informed membership	/	/		/	x	/
Extensive powers of:						
evidence taking	/	/		/	/	/
amendment	/	/	/	/	/	x
agenda setting	/	/	/	x	x	x

Key: / = yes; x = no; blank = unknown

*Standing committees only. Select committees excluded

** Committees of enquiry and control excluded

Source: Adapted from P Norton, 'The Legislative Powers of Parliament', in Flinterman, A. Heringa, A W and Waddington, L, *The Evolving Role of Parliaments in Europe*, Antwerp: Maklu, 1994, p. 24.

Maximising Committee Impact

i) Behavioural Changes

The findings listed above enable recommendations to be made as to how to maximise the viscosity or impact of bill committees and – in particular – the means by which committee members can maximise the likelihood of their amendments resulting in substantive changes to government bills. A noticeable trend across the decade compared to committees during Griffith's study has been the fall in the number of formal divisions in bill committees. The number of amendments being pushed to a division in contemporary committees has fallen by one third from the levels identified by Griffith. A more cooperative and less partisan approach is considered by MPs of all parties as being a more fruitful means of pursuing amendments and – as evidence from the Energy Bill suggested – is often a more effective means through which to constrain the government.

The greatest behavioural changes noticed in committee however are those that have been prompted by the introduction of oral evidence. They include committee members discussing their amendments prior to line by line scrutiny and using evidence sessions as a tool through which to trail forthcoming amendments; receiving the informed opinion of witnesses and deploying this evidence where necessary over the course of line by line scrutiny to add weight to their arguments. It is these changes which – if pursued more diligently by parliamentarians – could significantly increase the level of constraint exerted by bill committees over government legislation.

ii) Recommendations

Whilst these behavioural changes are important and show that committee members are already adapting their working methods to boost their capacity to make substantive legislative changes, one could make several additional recommendations as a result of this research to how to further maximise committee impact. The two most pressing would be increasing the amount of time between the taking of oral evidence and the beginning of traditional line by line scrutiny and the provision of greater staff resources to bill committee members to aid with the drafting of amendments.

The former is particularly important given the behaviour which has already been identified in those committees receiving oral evidence. There is currently no prescribed break between the end of oral evidence and the start of line by line scrutiny. If a committee finishes taking oral evidence in a Tuesday afternoon sitting, line by line scrutiny will commence on a Thursday morning. The maximum time (barring any public holidays or parliamentary recess) period between the two elements of committee would be five days – a committee may hold its final evidence session on a Thursday afternoon and begin the process of line by line scrutiny the following Tuesday morning. Furthermore, the reforms made to committees in 2006 also saw a change in the notice period required for amendments to be tabled. Whereas notices of amendments to bills had previously been required to be tabled two sitting days in advance of the committee sitting in which they were to be considered, a resolution of the House in November 2006 agreed to increase this period to three sitting days⁷¹⁵.

⁷¹⁵ Division 334, *HC Debates*, 1 November 2006, col. 407.

There is thus no period built in to the committee timetable to allow for a period of reflection following the oral evidence; to allow Members to consider the points raised by witnesses, to follow up on these points with their own research and potentially to draft amendments. Neither is the period always sufficient to allow committee members to draft and table amendments for consideration by the committee. Jonathan Djanogly noted during the Political Parties and Elections Bill Committee that important new evidence presented by witnesses meant that the Opposition wished to table 'significant' amendments, but that 'there would not be time for us, physically, to go and table the amendments'⁷¹⁶. Indeed, requests for starred amendments to be considered by the Chairman are frequently made at the start of the formal line by line scrutiny in bill committees. Increasing the time period between the end of oral evidence and the commencement of line by line scrutiny by at least one week would provide committee members with valuable time in which to consider their amendments and increase the capacity of committees to exert viscosity. More thoughtful and well drafted amendments may be more likely to be accepted by the government, or to see ministerial undertakings made at a later stage of the legislative process.

Related to this is the provision of greater resources to bill committee members. Those appointed to committees may see the need for an amendment which all parties later agree is required. But the amendment will not be accepted due to poor drafting and will therefore require the government minister to take the issue away, redraft with the assistance of Parliamentary Counsel and introduce again at report stage or during consideration of the Bill in the House of Lords. Levy has already recommended the recruitment of additional staff in the Scrutiny Unit to help with the administration of oral evidence sessions⁷¹⁷, but this should also include assistance to committee members with the drafting of their amendments, ensuring that substantive amendments are in an appropriate format for direct acceptance should the government minister feel that the change is necessary.

Areas for further research

Although the research conducted here was comprehensive and has enabled the compilation of a large data-set, several aspects of this research could be developed further to supplement the evidence of committee impact already presented.

⁷¹⁶ J Duddridge, *3rd Sitting, Political Parties and Elections Bill Committee*, 6 November 2008, col. 64.

⁷¹⁷ J Levy, 'Strengthening Parliament's Powers of Scrutiny: An Assessment of the Introduction of Public Bill Committees', London: The Constitution Unit, 2009, p. 44.

i) *Detailed Case Studies of Government Bills*

More detailed case studies of selected bills over the parliamentary sessions studied would provide more details regarding committee viscosity and perhaps give a more precise indication of the number of amendments tabled at report in response to amendments moved in committee⁷¹⁸. Additional interviews with committee members and ministers would shed further light on the techniques used by MPs to facilitate their proposed changes being made by the government. This method could also be employed to analyse a contemporary bill committee. Interviews with committee members during or immediately after committee or report stage may allow for more accurate reflections of the work of individual committee members, who will be more likely to recall the work they have undertaken on a given amendment.

ii) *Consideration of Additional Variables which may affect Committee Viscosity*

Most illuminating in terms of the committees already studied would be analysis of additional variables which may affect committee performance such as the type of bill under consideration and the culture or working atmosphere of individual committees. The former has already been discussed in some respects in terms of specialisation; some types of bill such as those considering areas of local government are more likely to contain high numbers of MPs with strong specialisation in the subject area; specialisation which has been demonstrated can make a great difference to the capacity of committees to constrain the government. It has also been noted that committees with high levels of specialisation are less partisan and thus in many respects more conducive to scrutiny. Members are more likely to cooperate over amendments and thus scrutiny becomes more constructive – at least among opposition and government backbenchers. Further exploration of this aspect of committee work would show whether amendments which see cooperation among committee members from different parties have a greater chance of success.

iii) *The Impact of Bill Committees in the House of Lords*

Although this research has considered the impact of bill committees during the report stage of government bills in some detail, time constraints have prevented any analysis of

⁷¹⁸ The methodology used here was to only include those amendments explicitly referred to by the minister as being moved at report in response to committee. As noted previously, this underestimates the true impact of bill committees at report stage.

the impact of legislative scrutiny in the House of Lords. The arguments and amendments presented in bill committees do not disappear once a bill finishes its scrutiny stages in the House of Commons; they are often taken up once again during scrutiny by the House of Lords. As has already been noted, on at least nine occasions across the sample amendments suggested by members of bill committees were taken away for further consideration by ministers and introduced in the House of Lords (see Appendix 15). Previous studies of the scrutiny of legislation by Kalitowski⁷¹⁹ and by Russell and Johns demonstrate the number of substantive amendments often made to legislation in the House of Lords. In particular, Russell and Johns suggest that the Lords works with the House of Commons in amending legislation, with the two chambers 'coordinating' their work in order to extract concessions from the government⁷²⁰. In particular, it highlights that of the amendments initiated during scrutiny in the House of Commons 'nearly half continued to be pursued in the Lords'⁷²¹. The current study of parliamentary scrutiny being undertaken by the Constitution Unit adds further evidence to support these findings, observing that the Lords 'is more influential than the Commons'⁷²² in terms of successful amendments to government bills. Thus there may be considerable value in considering the impact of bill committees during legislative scrutiny in the House of Lords.

iv) *Bill Committees in Coalition*

However, perhaps the most important area in the current political climate is the consideration of the work of bill committees under a coalition government. At the executive level, as Bennister and Heffernan note 'Cameron has still to work with and through ministers from his own party, but has also to work with and through Liberal Democrat ministers'⁷²³. At the party level it has been noted that 'minority elements in both parties have been willing to rebel'⁷²⁴. It would be interesting to note the effect of coalition politics on ministerial attitudes in bill committee; whether a greater number of amendments have been accepted by ministers in the 2010 Parliament. In addition,

⁷¹⁹ S Kalitowski, 'Rubber Stamp or Cockpit? The Impact of Parliament on Government Legislation', *Parliamentary Affairs*, 61, 4, 2008, pp. 694 – 708.

⁷²⁰ M Russell and J Johns, 'Bicameral Parliamentary Scrutiny of Government Bills: A Case Study of the Identity Cards Bill', *Paper presented to the Political Studies Association Conference, University of Bath, 11 – 13 April 2007*, p. 1

⁷²¹ *ibid.*, p. 10.

⁷²² M Russell *et al.*, 'A Measurable Difference: Assessing the Westminster Parliament's Impact on Government Legislation 2005-2010', *Paper to the ECPR Parliaments and Legislatures Conference*, Dublin, 24-27 June 2012, p. 14

⁷²³ M Bennister and R Heffernan, 'Cameron as Prime Minister: The Intra-Executive Politics of Britain's Coalition Government', *Parliamentary Affairs*, 65, 4, 2012, p. 778.

⁷²⁴ *ibid.*, p. 779.

research on the behaviour of committee members in the current Parliament would demonstrate whether coalition politics affects viscosity and the capacity of bill committees to constrain the executive branch.

Conclusion

The work of bill committees often falls below the radar of those documenting the day by day business of political life in the British Parliament. Very little, if any, work is ever reported outside the parliamentary estate despite its centrality to the content of government legislation⁷²⁵. This thesis has tried to counter this, shedding some light on the work of public bill committees and their members; members who frequently put many hours of work into scrutinising government legislation, for what appears to be very little in return. It is hoped that the research presented here has lain to rest some of the enduring myths of bill committee performance and impact. Although on the surface they may appear peripheral to the legislative process, they have the capacity to make substantial changes to government legislation; a capacity which is very often realised. In sum, bill committees are often able to exert considerable viscosity. They can – and do – make a difference to government bills.

⁷²⁵ The introduction of oral evidence appears to have made the work of bill committees slightly more newsworthy. Evidence given by Sir Iain Blair to the Counter Terrorism Bill Committee was widely reported (see P Mercer, *7th Sitting, Counter Terrorism Bill Committee*, 6 May 2008, col. 243). Line by line scrutiny however remains overwhelmingly unreported.

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Appendix 1: Indicators of Viscosity in Bill Committees

1. Frequency of successful government amendments
2. Frequency of successful non government amendments
3. Defeat of government amendments in committee
4. Frequency of undertakings given by ministers during committee sessions
5. Incorporation of committee concerns into government amendments at report stage and later on in the legislative process

Appendix 2: Sample of Government Bills

2000-01

Children's Commissioner for Wales Bill
Criminal Justice and Police [HL] Bill
Health and Social Care Bill
Homes Bill
Hunting Bill
International Criminal Court Bill
Private Security Industry [HL] Bill
Regulatory Reform [HL] Bill
Social Security Fraud [HL] Bill
Special Educational Needs and Disability[HL] Bill
Tobacco Advertising and Promotion Bill
Vehicles (Crime) Bill

2001-02

Adoption and Children Bill *

Commonhold and Leasehold Reform [HL] Bill

Education Bill

Enterprise Bill

Export Control Bill

Football (Disorder) (Amendment) Bill

Land Registration [HL] Bill

National Health Service Reform and Health Care Professions Bill

Police Reform [HL] Bill

Proceeds of Crime Bill

Sex Discrimination (Election Candidates) Bill

Tax Credits Bill

Travel Concessions (Eligibility) [HL] Bill

*Special Standing Committee

2002-03

Anti-Social Behaviour Bill

Communications Bill

Courts [HL] Bill

Crime (International Cooperation) [[HL] Bill

Criminal Justice Bill

Health (Wales) Bill

Health and Social Care (Community Health and Standards) Bill

Hunting Bill

Hunting (Recommitted) Bill*

Local Government Bill

Planning and Compulsory Purchase Bill

Planning and Compulsory Purchase (Recommitted) Bill*

Police (Northern Ireland) [[HL] Bill

Railways and Transport Safety Bill

Regional Assemblies (Preparations) Bill

Sexual Offences [HL] Bill

Water [HL] Bill

*Recommitted bills are included formally with the previous examination of the bill.

2003-04

Armed Forces (Pensions and Compensation) Bill

Asylum and Immigration (Treatment of Claimants Etc) Bill

Child Trust Funds Bill

Children [HL] Bill

Civil Contingencies Bill

Civil Partnership [HL] Bill

Companies (Audit, Investigation and Community Enterprise) [HL] Bill

Domestic Violence, Crime and Victims [HL] Bill

Employment Relations Bill

Energy [HL] Bill

Fire and Rescue Services Bill

Higher Education Bill

Housing Bill

Human Tissue Bill

Justice (Northern Ireland) [HL] Bill

Pensions Bill

Public Audit (Wales) [HL] Bill

Traffic Management Bill

2004-05

Clean Neighbourhoods and Environment Bill

Drugs Bill

Education [HL] Bill

Identity Cards Bill

Road Safety Bill

Serious Organised Crime and Police Bill

2005-06

Charities [HL] Bill

Childcare Bill

Children and Adoption [HL] Bill

Commons [HL] Bill

Companies [HL] Bill (formerly known as Company Law Reform [HL] Bill)

Consumer Credit Bill

Corporate Manslaughter and Corporate Homicide Bill

Criminal Defence Service [HL] Bill
Education and Inspections Bill
Electoral Administration Bill
Equality [HL] Bill
Health Bill
Identity Cards Bill
Immigration, Asylum and Nationality Bill
Legislative and Regulatory Reform Bill
London Olympic Games and Paralympic Games Bill
Natural Environment and Rural Communities Bill
NHS Redress [HL] Bill
Northern Ireland (Miscellaneous Provisions) Bill
Northern Ireland (Offences) Bill
Racial and Religious Hatred Bill
Regulation of Financial Services (Land Transactions) Bill
Road Safety [HL] Bill
Safeguarding Vulnerable Groups [HL] Bill
Terrorism (Northern Ireland) Bill
Violent Crime Reduction Bill
Welfare Reform Bill*
Work and Families Bill

2006-07

Child Maintenance and Other Payments Bill
Concessionary Bus Travel [HL] Bill
Consumers, Estate Agents and Redress [HL] Bill

Criminal Justice and Immigration Bill
Fraud (Trials Without a Jury) Bill
Further Education and Training [HL] Bill
Local Government and Public Involvement in Health Bill
Mental Health [HL] Bill
Offender Management Bill
Pensions Bill
Serious Crime [HL] Bill
Statistics and Registration Service Bill
Tribunals, Courts and Enforcement [HL] Bill
UK Borders Bill
Welfare Reform Bill*

* Welfare Reform Bill was carried over from the 05/06 session, where it had already had 12 bill committee sittings and so is used formally as a bill from the previous session.

2007-08

Banking Bill
Children and Young Persons [HL] Bill

Climate Change [HL] Bill
Counter-Terrorism Bill
Criminal Justice and Immigration Bill
Dormant Bank and Building Society Accounts [HL] Bill
Education and Skills Bill
Employment [HL] Bill
Energy Bill
Health and Social Care Bill
Housing and Regeneration Bill
Human Fertilisation and Embryology [HL] Bill
Local Transport [HL] Bill
Pensions Bill
Planning Bill
Political Parties and Elections Bill
Regulatory Enforcements and Sanctions [HL] Bill

2008-09

Apprenticeships, Skills, Children and Learning Bill
Borders, Citizenship and Immigration [HL] Bill
Child Poverty Bill
Coroners and Justice Bill
Equality Bill
Health [HL] Bill
Local Democracy, Economic Development and Construction [HL] Bill
Marine and Coastal Access [HL] Bill
Policing and Crime Bill
Savings Gateway Accounts Bill
Welfare Reform Bill

2009-10

Bribery [HL] Bill
Children, Schools and Families Bill
Crime and Security Bill
Energy Bill
Financial Services Bill
Flood and Water Management Bill

Appendix 3: Example of Coding Frame for Committee Amendments

Bill	Sitting	Clause/Schedule	Amendment	Text of Amendment	Mover	Description	Probing	Managerial or Substantial	Type of Amendment	Outcome	Undertaking
Drugs	1 st	Clause 1 – Aggravated Supply of Controlled Drug	25	in clause 1, page 1, line 18, leave out 'at a relevant time' and insert 'at any time'.	Cheryl Gillan	Extend aggravation to cover any time not just the time a school is open	No	Substantial	Opposition (FB)	Negated on Division	None
Drugs	1 st	Clause 1 – Aggravated Supply of Controlled Drug	26	in clause 1, page 2, line 1, leave out subsection (5).	Cheryl Gillan	Remove subsection 5 - aggravation times	No	Managerial	Opposition (FB)	Withdrawn	None
Drugs	1 st	Clause 1 – Aggravated Supply of Controlled Drug	11	in clause 1, page 2, line 9, leave out 'requests' and insert 'requires or causes'.	Alistair Carmichael	aggravation - change 'requests' to 'requires or causes' a person to deliver drugs etc	No	Managerial	Opposition (FB)	Withdrawn	Change Made*

Note: The words of the MP moving the amendment are also included in the database, though space limitations have prevented these from being presented here.

*Quotes explaining these changes in more detail were also included with the coding, as was any other information/quotes deemed relevant to the amendment.

Appendix 4: Sample of Public Bill Committees 2007-2010

Session	Committee	Oral Evidence	Written Evidence
2006-07	Criminal Justice and Immigration	Y	Y
2006-07	Child Maintenance and Other Payments	Y	Y
2006-07	UK Borders	Y	Y
2006-07	Local Government and Public Involvement in Health	Y	Y
2007-08	Political Parties and Elections	Y	Y
2007-08	Banking	Y	Y
2007-08	Counter-Terrorism	Y	Y
2007-08	Energy	Y	Y
2007-08	Health and Social Care	Y	Y
2007-08	Pensions	Y	Y
2007-08	Education and Skills	Y	Y
2007-08	Housing and Regeneration	Y	Y
2007-08	Planning	Y	Y
2008-09	Savings Gateway Accounts	Y	Y
2008-09	Equality	Y	Y
2008-09	Welfare Reform	Y	Y
2008-09	Policing and Crime	Y	Y
2008-09	Coroners and Justice	Y	Y
2008-09	Apprenticeships, Skills, Children and Learning	Y	Y
2009-10	Energy	Y	Y
2009-10	Crime and Security	Y	Y
2009-10	Children, Schools and Families	Y	Y
2009-10	Flood and Water Management	Y	Y
2009-10	Financial Services	Y	Y
2009-10	Bribery [HL]	N	Y

2008-09	Marine and Coastal Access [HL]	N	Y
2008-09	Local Democracy, Economic Development and Construction [HL]	N	Y
2008-09	Health [HL]	N	Y
2008-09	Borders, Citizenship and Immigration [HL]	N	Y
2007-08	Climate Change [HL]	N	Y
2007-08	Criminal Justice and Immigration	N	Y
2007-08	Human Fertilisation and Embryology [HL]	N	Y
2007-08	Local Transport [HL]	N	Y
2007-08	Children and Young Persons [HL]	N	N
2007-08	Regulatory Enforcements and Sanctions [HL]	N	Y
2007-08	Employment [HL]	N	N
2007-08	Dormant Bank and Building Society Accounts [HL]	N	N
2006-07	Mental Health [HL]	N	Y
2006-07	Offender Management	N	Y
2006-07	Pensions	N	Y
2006-07	Serious Crime [HL]	N	Y
2006-07	Statistics and Registration Service	N	N
2006-07	Tribunals, Courts and Enforcement	N	Y
2006-07	Consumers, Estate Agents and Redress	N	Y
2006-07	Further Education and Training	N	Y
2006-07	Concessionary Bus Travel [HL]	N	Y
2006-07	Fraud (Trials Without a Jury)	N	N
Total	48 committees	25 took oral evidence	43 received written evidence

KEY: Y=Yes, N=No

*The Welfare Reform Bill was carried over into the 2006-07 session but is included in the pre 2006 sample as this was the session in which it began its passage.

Appendix 5: Classification of Amendments

Managerial Amendments

Managerial amendments involve the addition or removal of clauses, schedules, lines or words for the purpose of clarification or ease of application. They are most commonly described by MPs as ‘technical amendments’⁷²⁶, ensuring for example, that a bill uses the same language as a previous bill on the same topic or that the most current version of an international treaty is being referred to. Managerial amendments include those designed to:

- make something which is implied in the bill or clause more explicit⁷²⁷.
- clarify or tighten a description or definition of a person, place, or activity within a bill.
- amend process within parliament, i.e. ensuring that codes of conduct or regulations are placed before the House, affirmative or negative resolution procedures, proposed sunset provisions.

In addition, the substitution of ‘may’ with ‘shall’ is classified as a managerial amendment in most instances, with the exception of those occasions where the argument of the Member tabling the amendment describes the change as one which will have a major and thus substantive impact on the clause or schedule in question. The addition/removal of the words ‘must’ and ‘may’ are also categorised in this way.

Substantial Amendments

Substantial amendments involve the addition or removal of clauses, schedules, lines or words which change the aim, purpose or subject of the clause, schedule or bill in question. These include amendments designed to:

- add the requirement of a review or consultation or for the consultation of additional bodies or interested parties.
- widen the application of a bill so that it applies to an additional country, such as Northern Ireland.

⁷²⁶ See for instance D Foster, *1st Sitting, Homes Bill Standing Committee*, 16 January 2001.

⁷²⁷ This includes adding substantial elements to a bill or clause which already exist, but which the Member tabling the amendments wishes to have in written form in the bill.

- change the powers available to those specified in the bill or clause.
- increase the length or a sentence for an offence or change a penalty or fine to be implied.
- add or remove criteria listed within a clause.
- change the power given to a minister in a devolved assembly or those allocated to the Secretary of State at Westminster.
- add or remove regulations or groups of people who to be affected by the bill or the clauses within it.
- any additional modifications which do not meet the criteria for a managerial amendment.
- Extend the application of a clause or schedule to other territories e.g Scotland, Wales, Isle of Man, Channel Islands
- Addition or removal of a clause or subsection of a clause due to policy disagreements, unless for managerial reasons⁷²⁸

⁷²⁸ See for example Amendment No. 30, *3rd Sitting, Water Bill Standing Committee*, 19 September 2003, col. 88. A subsection was removed from a clause for clarification and to prevent 'over drafting'. Such an amendment would be classified as managerial.

Appendix 6: Research Interviews Undertaken

<i>Position (2000-2010)*</i>	<i>Organisation</i>	<i>Date of Interview</i>
1. Government BB		23 February 2010
2. Government BB		3 March 2010
3. Government FB		3 March 2010
4. Government BB		23 March 2010
5. Opposition FB		4 April 2010
6. Government BB		7 April 2010
7. Government BB		10 May 2010
8. Government FB		25 June 2010
9. Head, Scrutiny Unit		22 July 2010
10. Government FB [†]		17 August 2010
11. Opposition BB		13 October 2010
12. Opposition BB		22 October 2010
13. Opposition BB		3 November 2010
14. Opposition BB		3 November 2010
15. Opposition BB		3 November 2010
16. Opposition FB		24 November 2010
17. Government FB		15 December 2010
18. Opposition FB		5 September 2011
19. Government FB [†]		18 October 2011
20. Civil Servant	HMRC	21 November 2012
21. Clerk of Bills	House of Commons	28 November 2012
22. Parliamentary Advisor	RSPCA	28 November 2012

*Relates to their position at the end of the 2009-2010 parliamentary session. This does not always correspond to their position at the time of interview.

[†] Telephone Interview

NB: BB = Backbench MP, FB= Frontbench MP

Appendix 7: Time Spent in Bill Committees 2000-2010

Total Time Spent in Committee 2000-2010

Parliamentary Session	Time spent in Committee (Hours)
2000-01	259.8
2001-02	336.2
2002-03	551.8
2003-04	397.1
2004-05	111.2
2005-06	462.9
2006-07	265.1
2007-08	466.2
2008-09	304.2
2009-10	155.6
Average	331.01

Average Time Spent in Committee per Bill 2000-2010

Parliamentary Session	Time spent in Committee (Hours)
2000-01	21.6
2001-02	25.9
2002-03	36.8
2003-04	22.1
2004-05	18.5
2005-06	16.5
2006-07	17.7
2007-08	27.4
2008-09	27.6
2009-10	25.9
Average	24.0

Appendix 8: Attendance of Individual Members at Bill Committees

Parliamentary Session	Members attending fewer than 60% of committee sittings		Members attending over 60% of committee sittings	
	<i>N</i>	%	<i>N</i>	%
2000-01	16	7.6	194	92.4
2001-02	19	8.5	203	91.5
2002-03	24	7.6	290	92.4
2003-04	40	11.9	294	88.1
2004-05	12	12.9	81	87.1
2005-06	37	8.1	417	91.9
2006-07	13	5.6	217	94.4
2007-08	10	3.9	241	96.1
2008-09	12	8.8	147	91.2
2009-10	9	10.8	74	89.2
Total	192	8.1	2158	91.9

NB: Excludes government ministers

Appendix 9: Reasons for Absence from Bill Committees

Reason for Absence	Example
<i>Failing to receive notification from the party Whips</i>	"the notification cards did not reach the board, so Members are present only because of hearsay" ⁷²⁹
<i>Appointed to two bill committees at the same time</i>	"I am also serving next door on the Standing Committee on the Serious Organised Crime and Police Bill". ⁷³⁰
<i>Working on other committees as members of the Chairman's Panel</i>	"Sadly, I missed the seventh sitting of the Standing Committee on 27 January, because I was next door chairing the Committee on the Identity Cards Bill" ⁷³¹ .
<i>Clashes with meetings of grand committees</i>	'I apologise to the Committee for not being in my place earlier, but the Northern Ireland Grand Committee is meeting as well, due to the crazy hours we have to work.' ⁷³²
<i>Attendance at a select committee meeting</i>	"May I apologise, Mr. Amess, for missing the start of the sitting? I had to attend my Select Committee in order to raise a question." ⁷³³
<i>Attendance in devolved assemblies</i>	"My hon. Friend the Member for Monmouth, who is not here to move his own amendment, is doing his last duty in the Welsh Assembly" ⁷³⁴
<i>Speaking in adjournment debate</i>	"I will not be able to be present in Committee throughout this debate because an Adjournment debate that I called in Westminster Hall has been allocated the time between 4 o'clock and 4.30 pm, and if I am not

⁷²⁹ P Luff, *1st Sitting, Hunting Bill (Recommitted)*, 3 July 2003, col. 15.

⁷³⁰ G Clifton Brown, *1st Sitting, Identity Cards Bill Committee*, 18 January 2005, col. 8.

⁷³¹ D Conway, *3rd Sitting, Clean Neighbourhoods and Environment Bill Committee*, 21 February 2005, col. 118.

⁷³² L Opik, *17th Sitting, Hunting Bill Committee*, 4 February 2003, col. 791.

⁷³³ P Rowen, *6th Sitting, UK Borders Bill Committee*, 6 March 2007, col. 182.

⁷³⁴ D T C Davies, *9th Sitting, UK Borders Bill Committee*, 13 March 2007, col. 290.

there, I will not be able to argue about the problems of audiology services, particularly in my constituency."⁷³⁵

⁷³⁵ C Chope, *2nd Sitting, Traffic Management Bill Committee*, 27 January 2004, col. 52.

Appendix 10: Bills Reported with Non Government Amendments

Parliamentary Session	Bills Reported with Non Government Amendments
2000-01	Criminal Justice and Police [HL] Bill Hunting Bill
2001-02	Proceeds of Crime Enterprise Police Reform
2002-03	NHS Reform and Health care Professions Local Government Criminal Justice Antisocial Behaviour Communications
2003-04	Hunting Energy Housing Higher Education
2004-05	Serious Organised Crime and Police Drugs
2005-06	Equality [HL] Company Law Reform [HL] Education and Inspections Road Safety [HL] Electoral Administration
2006-07	Local Government and Public Involvement in Health Tribunals, Courts and Enforcement
2007-08	Banking Counter Terrorism
2008-09	Coroners and Justice Marine and Coastal Access
2009-10	Flood and Water Management

Appendix 11: Successful Meetings with Government Ministers before Report Stage

Session	Bill	Issue(s) raised in Committee	Meeting	Amendments Introduced at Report	Comments
2003-04	Energy [HL]	Require Secretary of State to report annually to Parliament on the security of energy supply	Minister met with opposition spokesmen	New Clause 5	'secured only on the instance of and after protracted negotiations with the Opposition teams in both Houses' ⁷³⁶
2003-04	Energy [HL]	Require Secretary of State to report to Parliament annually on security of supply	Minister kept opposition spokesman involved at every stage of drafting new clause	New Clause 5	I thank the Minister for the generous and courteous way in which he has dealt with the new clause. He has certainly involved me at every stage, for which I am grateful to him. We have got to a position that is acceptable to hon. Members in all parts of the House, and that is very sensible ⁷³⁷
2004-05	Serious Organised Crime and Police	Create a new offence of a criminal or tortuous act against a person that causes loss or damage with the intention of harming an animal research organisation	Minister met with Opposition spokesmen	New Clauses 10-14 and amendments 99, 100 and 110	'we had extensive discussions in Committee on animal rights extremists and I said that the Government would table amendments on Report to tackle more effectively unlawful campaigns by animal rights extremists that are aimed at causing economic damage to organisations involved in animal

⁷³⁶ S O'Brien, *HC Debates*, 13 July 2004, col. 1372.

⁷³⁷ L Robertson, *HC Debates*, 13 July 2004, col. 1322.

2005-06	Criminal Defence Service)	Compromise on appeals process (House of Lords amendment had been removed in committee)	MP met with minister's advisers to discuss amendment	Amendment 1	research through pressure on third parties to break commercial or other links. I hope that hon. Members on both sides of the House will recognise that these amendments fulfil that commitment. I have met Opposition Front-Bench spokesmen to discuss them in more detail' ⁷³⁸ .
2005-06	NHS Redress [HL]	Place a general duty to promote resolution under the NHS Redress scheme	MP met with minister, department and outside groups (AvMA)	New Clause 1	'...in Committee I told the Minister that I was prepared to consider ways in which we could accomplish at least part of our objective by another route that was more acceptable to her and the Department. She was kind enough to suggest that we could have further discussions on that matter, and I pay tribute to her advisers who met with me to consider possible alternatives' ⁷³⁹ . I thank my hon. Friend the Member for Birmingham, Erdington (Mr. Simon) for the constructive way in which has engaged with me and the Department on the Bill. I thank him for facilitating the meeting that we held with AvMA between the conclusion of the Committee and today's proceedings. To complete the tribute to him, I should compliment

⁷³⁸ C Flint, *HC Debates*, 7 February 2005, col. 1248.

⁷³⁹ D Heath, *HC Debates*, 26 January 2006, col. 1574.

2006-07	Mental Health [HL]	Change section 145(1) of the Mental Health Act 1983 as: "'medical treatment' includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care (but see also subsection (4) below).	Minister met with outside organisation and opposition spokesmen	Amendments 1-3	<p>him on his parliamentary drafting skills, which are clearly excellent⁷⁴⁰.</p> <p>'I carefully looked at the signatories to the amendment, and I am glad that the Opposition parties support it; I do not wish to give the impression that I begrudge that. My hon. Friend and the Opposition parties have proposed this measure and it is a good compromise. I assume that the Opposition parties had discussions with my hon. Friend, and I am glad that they wish to support his amendment. In light of everything that he has said—and of our meeting this morning when we discussed the "manifestations" issue and the fact that many organisations have backed his amendment—I am glad to say that the Government will agree to the amendment'⁷⁴¹</p> <p>'The amendment that we are discussing today has considerable support from Members in all parts of the House. I have given it serious consideration, and have met representatives of several organisations'.⁷⁴²</p>
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⁷⁴⁰ A Burnham, *HC Debates*, 13 July 2006, col. 1523.

⁷⁴¹ R Winterton, *HC Debates*, 19 June 2007, col. 1284-5.

⁷⁴² R Winterton, *HC Debates*, 19 June 2007, col. 1284-5.

2006-07	Pensions	Provisions apply only to schemes that were in the process of winding up before the specified date on which schemes became eligible for the PPF	Minister met with MPs	New Clause 25	'The Minister was good enough to meet Mr. Richard Nicholl and me to discuss amendments that are adequately covered by the excellent new clause 25, which was tabled by the hon. Member for Cannock Chase (Dr. Wright), who also wishes to intervene at this stage.' ⁷⁴³
2007-08	Housing and Regeneration	Powers of HCA - community land trusts	Minister invited Opposition spokesman to meeting to discuss	New Clause 32 and amendment 151	<p>"A concern that I had in Committee and when I met CLT representatives in February was the need to avoid future-proofing in terms of the agency. I stand by my statement in Committee that I am a big fan of local housing companies, whereby local authorities provide the land and private developers provide the construction skills in a joint venture, but I would not want to include that provision in the Bill either. I am interested in the experiences that the hon. Member for Welwyn Hatfield has had with regard to Cornwall, and I am keen to invite him to a meeting to discuss those."⁷⁴⁴</p> <p>'One of the key things that we must do relates to a slightly wider and perhaps more fundamental point.</p>

⁷⁴³ B Cash, *HC Debates*, 18 April 2007, col. 326.

⁷⁴⁴ I Wright, *HC Debates*, 31 March col. 523.

					Given the economic difficulties across the Atlantic and the relatively risk-averse nature of financial institutions, how can we still inspire confidence in the financial markets in order to help to build the housing that we need? My right hon. Friend the Minister for Housing will play a key role in inspiring lender confidence through the meetings that she has. We need to address that risk-averse nature; it is important that we do that. I am keen to work with all those available to help that to happen. I am keen to discuss a way forward on the particular circumstances mentioned by the hon. Member for Welwyn Hatfield, and I hope he would agree with me on that basis. ⁷⁴⁵
07-08	Local Transport [HL]	Consultation of passenger representatives; Quality contracts scheme guidance; TUPE regulations; Payment of fines direct to a local authority; Political balance of ITAs	Minister met with MPs, trade unions, bus operators and local authorities	New Clauses 9-19 Amendments 121, 122, 124-128, 151-157 163-265	Minister went 'above and beyond the call of duty' ⁷⁴⁶ .
09-10	Crime and Security	Statement to ensure that domestic violence included threats against children	Minister agreed to work with backbench MP	Amendments 1 and 2*	"We wanted to change the wording slightly, and I discussed that with my hon. Friend. He listened to what I said, and he has tabled an amendment that reflects his

⁷⁴⁵ I Wright, *HC Debates*, 31 March 2008, col. 523.

⁷⁴⁶ G Stringer, *HC Debates*, 27 October 2008, col. 594.

				concerns in Committee and we will accept it this evening." ⁷⁴⁷
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*These were government backbench amendments which were accepted by the government minister at report

⁷⁴⁷ D Hanson, HC Debates, 8 March 2010, col. 105.

Appendix 12: Successful Government Amendments at Report Stage which have been discussed in committee but on which no undertaking was given

Session	Managerial	Substantive	Total
2000-01	32	6	38
2001-02	67	6	73
2002-03	59	17	76
2003-04	50	12	62
2004-05	26	5	31
2005-06	151	17	168
2006-07	115	22	137
2007-08	177	14	191
2008-09	25	6	31
2009-10	29	2	31
Total	731	107	838

Appendix 13: Changes made during Report Stage of the NHS Redress [HL] Bill as a Result of Committee Scrutiny

Change	Type of Change	Quote	Substantiveness of Change
Insert a general duty to promote resolution under the scheme	Backbench amendment	'I thank my hon. Friend the Member for Birmingham, Erdington (Mr. Simon) for the constructive way in which has engaged with me and the Department on the Bill. I thank him for facilitating the meeting that we held with AvMA between the conclusion of the Committee and today's proceedings. To complete the tribute to him, I should compliment him on his parliamentary drafting skills, which are clearly excellent'. ⁷⁴⁸	Substantial
Redress to include the giving of a report on actions to be taken at a local level	Government amendments following undertaking to reconsider	'I was asked by the hon. Lady and others to consider an amendment to the Bill to provide for a report on action to be taken to prevent similar cases arising in the future, and for that report to be made available where appropriate. I am pleased to say that, having considered this matter carefully, I have tabled such an amendment'. ⁷⁴⁹	Substantial
Require the scheme to provide for the findings of an investigation to be recorded in a report, and for the report to be made available to the	Government amendments prompted by committee	In Committee, the point was well made, particularly by the hon. Member for Romsey (Sandra Gidley) and my hon. Friend the Member for Stoke-on-Trent, Central	Substantial

⁷⁴⁸ A Burnham, *HC Debates*, 13 July 2006, col. 1523.

⁷⁴⁹ *ibid.*, col. 1526.

individual seeking redress on request		(Mark Fisher), that patients harmed during their NHS care often say that they do not want it to happen to anyone else. I have never been at odds with that statement ⁷⁵⁰ .	
Require a member of the redress scheme to prepare and publish an annual report about cases falling under the scheme and the lessons to be learned from them.	Government amendments following undertaking to reconsider	‘I was asked in Committee by the hon. Members for Beverley and Holderness (Mr. Stuart) and for Ruislip-Northwood (Mr. Hurd) to accept that there should be a guarantee written into the Bill that annual reports will be provided. Being a partisan soul and one who, in very rare circumstances, considers himself likely to accept Conservative amendments to any Government legislation, I find myself in an extraordinary position. The hon. Gentlemen made a reasonable suggestion, and the amendments that we have tabled are a response to their sensible argument and the constructive discussions that we had’ ⁷⁵¹ .	Substantial

⁷⁵⁰ A Burnham, *HC Debates*, 13 July 2006, col. 1526.

⁷⁵¹ *ibid.*, col. 1530

Appendix 14: Evidence Submitted to the Health and Social Care Bill Committee

Organisations giving Oral Evidence

British Medical Association (2)
Department of Health (3)
Healthcare Commission (2)
HM Treasury
Judicial Office
Local Government Association (2)
Mental Health Act Commission (2)
Minister of State for Health
National Childbirth Trust
Social Care Inspection
Which? (2)

Organisations and Individuals submitting Written Evidence

Age Concern
Bliss
Carers UK
Commission for Social Care Inspection
CSCI
Department of Health
Equality and Human Rights Commission
General Medical Council
General Optical Council
General Social Care Council
Geoffrey Crittenden
Healthcare Commission (2)
Help The Aged
Local Government Association (2)
Medical Defence Union
Mental Health Act Commission (2)
Monitor
National Aids Trust
National Childbirth Trust
NHS Confederation
Parliamentary Ombudsmen and Health Service Ombudsmen
Patients Association
Picker Institute
Royal College of Nursing
Tamba
Terrence Higgins Trust
Unison
Which? (2)
York Health Economics Consortium

NB: Numbers in brackets refer to organisations from which more than one person gave evidence.

Appendix 15: Government Amendments to be made in the House of Lords

Session	Bill	Amendment(s)	Quote	Purpose
2002-03	Criminal Justice	122	I am delighted to hear from the Minister that he is in favour of consultation with groups about any changes to the Police and Criminal Evidence Act 1984. He specifically mentioned the Bar Council and the Law Society. Am I to take it that the Government propose to table an amendment in another place specifically to provide that they should be consulted? I see the Minister nodding, but he had better put it on record. ⁷⁵²	Remove consultation requirements from the Institute of Legal Executives
2002-03	Criminal Justice	54	We would be grateful to hear further views in the light of what I have just suggested, and against that background I would ask that the amendments be withdrawn, although we would be happy to return to the issue to deal with other Members' views in another place. ⁷⁵³	Require the retention of the affirmative resolution procedure for new and revised PACE codes
2005-06	Electoral Administration	3, 20-23	We therefore propose to table an amendment at a later stage to take a power under the Bill to introduce a scheme through secondary legislation, which will follow full and wide-ranging consultation with all interested parties. We will learn from political parties' expenditure, party lists in Wales and Scotland and the Electoral Commission's current work on expenditure at the previous general election. I want to give a clear assurance that hon. Members will have the opportunity to have their say during any proposed consultation and before any scheme is submitted to Parliament. ⁷⁵⁴	Change four month requirement on third party election expenses

⁷⁵² D Grieve, *HC Debates*, 19 May 2003, col. 707.

⁷⁵³ B Ainsworth, *HC Debates*, 19 May 2003, col. 702.

⁷⁵⁴ D Cairns, *HC Debates*, 11 January 2006, col. 351.

2006-07	Pensions	NC 25	Dr. Tony Wright: On the basis of what I think that the Minister has told me, even though there is still some uncertainty, I will not press new clause 25 to a Division. Will he assure me, the Opposition and other hon. Members that the words that will be presented to the House of Lords will reflect what he said today? James Purnell: I assure my hon. Friend that the wording will do exactly that. ⁷⁵⁵	Provisions apply only to schemes that were in the process of winding up before the specified date on which schemes became eligible for the PPF
2007-08	Pensions	NC 22	I propose to suggest an amendment in due course, to be tabled in another place, in order to ensure that those who are affected in that way can get some sort of help. ⁷⁵⁶	Provide help for people with a terminal illness who are unable to make a claim on Pension Protection Fund if their pension scheme has failed and they are under the prescribed age
2007-08	Planning	323,329,330	As a result of that, I expect us to revert to the subject in another place, and I am happy to meet the right hon. Gentleman to discuss it further. On that basis, I ask him not to press his amendments. ⁷⁵⁷	Apply clause 161 only to classes of development that were specified in secondary legislation
2007-08	Health and Social Care	NC1, 2, 4 3-8, 11, 14-18	I hope that when the Government table an amendment in the other place, it will address the fundamental problem of the definition of what is a public authority in this context, as one of my amendments would do. On that basis, I would be happy not to press this particular matter any further. ⁷⁵⁸	Ensure compatibility with Human Rights Act
2007-08	Climate Change [HL]	72	However, I am pleased to say that we can accept amendment No. 72 in the name of my right hon. Friend the Member for Scunthorpe (Mr. Morley). The Government believe that when setting or advising on budgets, due regard should be given to emissions from international aviation and shipping; my right hon. Friend and the shadow Committee	Require the Government and the Committee on Climate Change to take into account projected greenhouse gas emissions from international aviation and

⁷⁵⁵ *HC Debates*, 18 April 2007, col. 362.

⁷⁵⁶ M O'Brien, *HC Debates*, 22 April 2008, col. 1237.

⁷⁵⁷ C Flint, *HC Debates*, 25 June 2008, col. 392.

⁷⁵⁸ J Ruddock, *HC Debates*, 28 October 2008, col. 740.

2008-09	Saving Gateway Accounts	3, 4	<p>on Climate Change have made that clear. We are saying that we will have due regard to emissions from aviation and shipping, as the Committee recommended, but we cannot account for them domestically at present. There are a few technical problems with amendment No. 72; for example, it refers to “budget” rather than budgetary periods, and refers not to the Committee on Climate Change, but only to the Secretary of State. It does not refer to “targeted” greenhouse gases, which is how such gases are defined in the Bill. The Government will therefore return, before final consideration in the Lords, with a version of the amendment that has benefited from parliamentary counsel’s redrafting; I hope that all parties can agree to that.</p> <p>‘minded to table an amendment for consideration in the other place’.⁷⁵⁹</p>	<p>shipping when making any decisions relating to carbon budget</p> <p>Ensure that people of working age in receipt of a carer’s allowance were not excluded from the Savings Gateway Accounts scheme</p>
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⁷⁵⁹ I Pearson, *HC Debates*, 25 February 2009, col. 296.

Appendix 16: Specialisation in the Local Government and Public Involvement in Health Bill Committee (2006-07 Session)

Committee Member	Specialisation	
	<i>First Hand</i>	<i>Second Hand</i>
Roberta Blackman Woods	Councillor 1999 - 2000	None
Tom Brake	Councillor 1994 - 1998	Local Government Spokesman
Lyn Brown	Councillor 1998 - present	Member, DCLG Select Committee
David Burrowes	Councillor 1994 - 2006	None
Alistair Burt	Councillor 1982 – 1984; Spoke of a 15 year career in local government	Shadow Minister for Communities and Regeneration
Philip Dunne	Councillor 2001 - present	None
Michael Fabricant	None	None
Andrew Gwynne	Councillor 1996 - present	None
Patrick Hall	Councillor 1989 - 1997	Member, APPG on Patient and Public Involvement in Health
Tom Levitt	Councillor 1976 - 1997	Chair, APPG on Community and Voluntary Sector
Robert Neill	Director, NE London Strategic Health Authority 2002-2006; Councillor 1974-1990	None
Dr John Pugh	Councillor 1987 - 2001	Health Spokesman; Member, Local Government Select Committee 2001-2002, 2002-2003, 2005- present
Alison Seabeck	Former Councillor; Speaker at Local Government conferences	Member, Communities and Local Government Committee 2005-present
Jonathan Shaw	Councillor 1993 – 1998	None
Sir Peter Soulsby	Councillor 1973 – 2003; Leader of Council 1981-1994, 1995-1999	None
Andrew Stunell	Former Councillor; Vice Chair, Association of County Councils 1985-1990, Vice President of LGA 1997-present	Local Government Spokesman
Robert Syms	Councillor 1983-1997, Member, Regional Health Authority 1988-1990	Shadow Local Government Minister
Neil Turner	Councillor 1972-1974, 1975-2000; Vice Chair, Public Services Committee, Association of Metropolitan Authorities 1987-95; Chair 1995-97; Chair of LGA Quality Panel 1998-99	None
Lynda Waltho	Regional Officer, The Labour Party (provided assistance to councillors)	None

NB: Government Ministers (Phil Woolas, and Angela E Smith) have been excluded

Appendix 17: Specialisation in Committees with Successful Amendments

Session	Bill Committee	No <i>specialisation</i>	Specialisation	
			<i>First Hand</i>	<i>Second Hand</i>
2000-01	Hunting Bill	37	17 (7)	63 (43)
2000-01	Criminal Justice and Police	35	35 (25)	45 (30)
2001-02	Police Reform	48	35 (35)	30 (22)
	NHS Reform and Healthcare	27	33 (33)	53 (27)
2001-02	Professionals			
2001-02	Enterprise	53	26 (21)	42 (11)
2001-02	Proceeds of Crime	52	35 (35)	26 (13)
2002-03	Anti-Social Behaviour	35	24 (24)	53 (35)
2002-03	Communications	35	26 (22)	74 (57)
2002-03	Local Government	19	65 (65)	27 (15)
2002-03	Criminal Justice	33	57 (52)	43 (24)
2002-03	Hunting Bill	17	50 (40)	63 (40)
2003-04	Higher Education	41	27 (18)	46 (32)
2003-04	Housing	30	35 (25)	50 (25)
2003-04	Energy	25	25 (15)	70 (55)
2004-05	Drugs	47	13 (7)	47 (33)
2004-05	Serious Organised Crime	56	28 (28)	50 (28)
2005-06	Equality	21	37 (26)	47 (37)
2005-06	Road Safety	47	12 (6)	41 (35)
2005-06	Education and Inspections	29	19 (14)	62 (57)
2005-06	Company Law Reform	25	50 (50)	60 (35)
2005-06	Electoral Administration	33	20 (20)	53 (47)
	Local Government and Public	5	84 (84)	33 (33)
2006-07	Involvement in Health Bill			
	Tribunals, Courts and	60	40 (40)	27 (20)
2006-07	Enforcement (HL) Bill			
2007-08	Banking	38	38 (38)	56 (50)
2007-08	Counter Terrorism	24	24 (24)	71 (38)
2008-09	Coroners and Justice	19	50 (50)	81 (56)
2008-09	Marine and Coastal Access	29	36 (36)	56 (29)
2009-10	Flood and Water Management	33	20 (13)	56 (47)
Average		34	34 (30)	51 (35)

NB: Numbers in brackets refer to the percentage of members with strong specialisation

Appendix 18: Specialisation and Successful Non Government Amendments (Upper and Lower Quartiles)

Quartile	Range of Specialisation (%)	Bill Committees	
		<i>N</i>	<i>With Successful Non Government Amendments</i>
Upper	95 – 70	35	9
Lower	50 - 7	35	3

Appendix 19: Specialisation of Members Moving Successful Amendments in Committee

Session	Bill	Member	Amendment	Extent of Specialisation	
				<i>First Hand</i>	<i>Second Hand</i>
2000-01	Hunting	David Lidington		None	Strong
2000-01	Criminal Justice and Police [HL]	Oliver Heald		None	Strong
2002-03	Criminal Justice	Graham Allen		None	None
2002-03	Criminal Justice	Graham Allen		None	None
2002-03	Criminal Justice	Graham Allen		None	None
2002-03	Criminal Justice	Graham Allen		None	None
2002-03	Criminal Justice	Humfrey Malins		Strong	Strong
2002-03	Criminal Justice	Dominic Grieve		Strong	Strong
2002-03	Criminal Justice	Dominic Grieve		Strong	Strong
2002-03	Criminal Justice	Humfrey Malins		Strong	Strong
2002-03	Hunting	Alan Whitehead		None	Strong
2002-03	Hunting	Rob Marris		None	Mild
2002-03	Hunting	Michael Foster		None	Strong
2002-03	Hunting	Michael Foster		None	Strong
2002-03	Hunting	Michael Foster		None	Strong
2002-03	Hunting	Michael Foster		None	Strong
2002-03	Hunting	Alan Whitehead		None	Strong
2002-03	Hunting	Rob Marris		None	Mild
2002-03	Hunting	Rob Marris		None	Mild
2002-03	Hunting	Michael Foster		None	Strong
2002-03	Hunting	Michael Foster		None	Strong
2002-03	Hunting	Michael Foster		None	Strong
2002-03	Hunting	Adrian Flook		Strong	None
2002-03	Hunting	Adrian Flook		Strong	None

2002-03	Communications	Calum Macdonald	None	None
2002-03	Health and Social Care (Community Health Standards)	Stephen Pound	Strong	None
2002-03	Local Government	Ed Davey	Strong	None
2002-03	Local Government	Ed Davey	Strong	None
2002-03	Local Government	Ed Davey	Strong	None
2002-03	Local Government	Ed Davey	Strong	None
2002-03	Antisocial Behaviour	Nick Hawkins	Strong	Strong
2002-03	Communications	John Whittingdale	None	Strong
2002-03	Communications	John Whittingdale	None	Strong
2002-03	Antisocial Behaviour	Nick Hawkins	Strong	Strong
2004-05	Serious Organised Crime and Police	Andrew Mitchell	None	Strong
2004-05	Serious Organised Crime and Police	David Heath	Strong	Strong
2004-05	Drugs	Cheryl Gillan	None	Strong
2006-07	Local Government and Public Involvement in Health	Patrick Hall	Strong	Mild
2006-07	Tribunals, Courts and Enforcement (HL)	Brooks Newmark	None	None

Appendix 20: Levels of Association between the Specialisation of Backbenchers and Ministerial Undertakings

Does MP have Specialisation? * Type of Undertaking Crosstabulation

		Type of Undertaking					Total
		Change Made	Compromise	Reconsider	Report Stage Commitment	No Undertaking	
Does MP have Specialisation? Yes	Count	31	38	205	45	1806	2125
	% within Type of Undertaking	79.5%	74.5%	77.9%	81.8%	67.2%	68.6%
No	Count	8	13	58	10	883	972
	% within Type of Undertaking	20.5%	25.5%	22.1%	18.2%	32.8%	31.4%
Total	Count	39	51	263	55	2689	3097
	% within Type of Undertaking	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.082	.000
	Cramer's V	.082	.000
N of Valid Cases		3097	

Undertaking: Change Made

Does MP have Specialisation? * Did Amendment See Change Made Crosstabulation

			Did Amendment See Change Made		Total
			Yes	No	
Does MP have Specialisation?	Yes	Count	31	2094	2125
		% within Did Amendment	79.5%	68.5%	68.6%
		See Change Made			
	No	Count	8	964	972
		% within Did Amendment	20.5%	31.5%	31.4%
		See Change Made			
Total	Count	39	3058	3097	
	% within Did Amendment	100.0%	100.0%	100.0%	
	See Change Made				

Symmetric Measures

	Value	Approx. Sig.
Nominal by Nominal Phi	.026	.141
Cramer's V	.026	.141
N of Valid Cases	3097	

Undertaking: Compromise

Does MP have Specialisation? * Did Amendment See Compromise Crosstabulation

			Did Amendment See Compromise		Total
			Yes	No	
Does MP have Specialisation?	Yes	Count	38	2087	2125
		% within Did Amendment	74.5%	68.5%	68.6%
		See Compromise			
	No	Count	13	959	972
		% within Did Amendment	25.5%	31.5%	31.4%
		See Compromise			
Total	Count		51	3046	3097
	% within Did Amendment		100.0%	100.0%	100.0%
	See Compromise				

Symmetric Measures

	Value	Approx. Sig.
Nominal by Nominal Phi	.016	.360
Cramer's V	.016	.360
N of Valid Cases	3097	

Type of Undertaking: Reconsider

Does MP have Specialisation? * Does Amendment See Undertaking to Reconsider Crosstabulation

			Does Amendment See Undertaking to Reconsider		Total
			Yes	No	
Does MP have Specialisation?	Yes	Count	205	1920	2125
		% within Does Amendment See Undertaking to Reconsider	77.9%	67.7%	68.6%
	No	Count	58	914	972
		% within Does Amendment See Undertaking to Reconsider	22.1%	32.3%	31.4%
Total		Count	263	2834	3097

Does MP have Specialisation? * Does Amendment See Undertaking to Reconsider Crosstabulation

		Does Amendment See Undertaking to Reconsider		Total
		Yes	No	
Does MP have Specialisation?	Yes	Count 205 77.9%	Count 1920 67.7%	Count 2125 68.6%
	No	Count 58 22.1%	Count 914 32.3%	Count 972 31.4%
Total		Count 263 100.0%	Count 2834 100.0%	Count 3097 100.0%

Symmetric Measures

	Value	Approx. Sig.
Nominal by Nominal Phi	.061	.001
Cramer's V	.061	.001
N of Valid Cases	3097	

Type of Undertaking: Report Stage Commitment

Does MP have Specialisation? * Does the Amendment Receive an Undertaking to Table Amendment at Report

Crosstabulation

		Does the Amendment Receive an Undertaking to Table Amendment at Report		Total
		Yes	No	
Does MP have Specialisation?	Yes	Count	45	2125
		% within Does the Amendment Receive an Undertaking to Table Amendment at Report	81.8%	68.6%
	No	Count	10	972
		% within Does the Amendment Receive an Undertaking to Table Amendment at Report	18.2%	31.4%
Total		Count	55	3097
		% within Does the Amendment Receive an Undertaking to Table Amendment at Report	100.0%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.038	.033
	Cramer's V	.038	.033
N of Valid Cases		3097	

Appendix 21: Recommendations for Evidence Taking Powers in Written Evidence Submitted to the Modernisation Committee (2006)

Chairman of Ways and Means (M31)

"My view is that if standing committees are going to become a vehicle for more effective scrutiny of policy ... then an obvious route is greater use of the special standing committee procedure."⁷⁶⁰

The Hansard Society (M57)

"The Hansard Society has long proposed that bills should be more regularly committed to Special Standing Committees to allow for expert witnesses to be called and provide an additional forum for consideration and scrutiny."⁷⁶¹

Centre for Public Scrutiny (M63)

"This move towards an evidence based approach is essential to build strong pre-legislative scrutiny arrangements however, it has been used very rarely"⁷⁶²

Sir Nicholas Winterton (M66)

"Empowering standing committees to be able to take evidence would hone their scrutinising edge. Powers to do this currently exist in both Houses of Parliament, through special standing committees, but are not widely used. Making the use of special standing committees the rule rather than the exception has been advocated by the House of Lords Constitution Committee, the Conservative Party's Commission to Strengthen Parliament, Robin Cook and Vernon Bogdanor among others."⁷⁶³

⁷⁶⁰ Chairman of Ways and Means, Evidence submitted to The Legislative Process, *Select Committee on the Modernisation of the House of Commons, First Report of Session 2005-06*, HC 1097, EV 98.

⁷⁶¹ The Hansard Society, Evidence submitted to The Legislative Process, *Select Committee on the Modernisation of the House of Commons, First Report of Session 2005-06*, HC 1097, EV 109.

⁷⁶² Centre for Public Scrutiny, Evidence submitted to The Legislative Process, *Select Committee on the Modernisation of the House of Commons, First Report of Session 2005-06*, HC 1097, EV 117.

⁷⁶³ N Winterton, Evidence submitted to The Legislative Process, *Select Committee on the Modernisation of the House of Commons, First Report of Session 2005-06*, HC 1097, EV 123.

Appendix 22: Non Government Amendments Tabled in Bill Committees

Period	Government Backbench		Opposition	
	<i>Total</i>	<i>Average per Bill</i>	<i>Total</i>	<i>Average per Bill</i>
1967-71*	392	4	2832	26
2000-2010	1242	9	15,881	111
Standing Committees (2000-2006)	811	9	10,613	115
Public Bill Committees (2007-2010)	430	9	5,260	107
Evidence Taking Public Bill Committees	308	12	3,886	155

*Figures taken from J A G Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen & Unwin, 1974, p. 93.